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**REPORT TO THE ATTORNEY GENERAL OF ONTARIO
ON CERTAIN MATTERS RELATING TO
KARLA HOMOLKA**

THE HONOURABLE PATRICK T. GALLIGAN, Q.C.

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March 15, 1996

The Honourable Charles A. Harnick, Q.C.
Attorney General of Ontario
Ministry of the Attorney General
720 Bay Street
Toronto, Ontario
M5G 2K1

Dear Mr. Attorney,

With this letter, I transmit to you my Report upon
matters which you referred to me by your Terms of Reference
dated November 14, 1995.

Yours sincerely,

The Hon. Patrick T. Galligan, Q.C.

PTG/mc
Encl.

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FOREWORD

On November 14, 1995, the Attorney General of Ontario, The Honourable Charles Harnick, Q.C., announced in the Legislature that he had appointed me to inquire into and report to him on certain matters relating to two decisions respecting Karla Homolka made by officials in the Ministry of the Attorney General. The Terms of Reference which he gave to me are the following:

1. Whether the plea arrangement entered into by Crown counsel with Karla Homolka on May 14, 1993, was appropriate in all the circumstances.
2. Whether the advice given by Crown counsel to the Green Ribbon Task Force in connection with possible charges against Karla Homolka arising out of a sexual assault on Jane Doe was appropriate in all the circumstances.
3. Whether in all the circumstances, it is appropriate or feasible to take further proceedings against Karla Homolka for her part in the deaths of Kristen French and Leslie Mahaffy and sexual assault on Jane Doe.
4. To inquire into such related matters, if any, which the Attorney General may, from time to time, direct.

Because my retirement as a judge of the Court of Appeal for Ontario did not become effective until November 30, 1995, I was unable to begin work on the inquiry until that date. Except for handling three alternative dispute resolution matters which had been booked long before the inquiry was announced, and which

engaged approximately eight days of my time, I have worked full time on the inquiry in an effort to meet the requested reporting date of March 15, 1996.

Initially, a considerable amount of time was spent in planning and strategy sessions with my counsel, David M. Humphrey. Because the inquiry was not created pursuant to the *Public Inquiries Act*, R.S.O. 1990 c.P.41, it was conducted in private.

I thought it necessary, however, to meet and discuss the circumstances surrounding the two decisions with as many of the persons involved in them as possible. Accordingly, I interviewed all of the Crown Attorneys and their Assistants who were engaged in the prosecution of the murder charges and what were known as the Scarborough rapes. I also interviewed all of the lawyers who were involved in the two decisions which gave rise to the inquiry.

In addition, there were a number of matters upon which I wanted to have the advice of practising lawyers. I asked a number of them to meet with me so that I could have the benefit of their experience and expertise. Within the time frame which I was given, it was not possible to consult as widely as I might otherwise have wished. I sought out the advice of a relatively small group of lawyers, but one which I thought was sufficiently broad to give me a wide range of views within the profession. Some lawyers spoke to me as representatives of certain professional organizations. Others did so in their personal capacities. I would like to thank each and every one of them for their great assistance and for their generosity with their very valuable time. We live in an era when the legal profession is often the target of criticism. The generosity of spirit of all of those lawyers who helped me was heartening and proves that members of the profession are public spirited and generous with their time, talent and experience.

Early on in the inquiry, I decided to make contact with those persons or groups who were intimately involved with the case. I spoke with John Rosen and Anthony Bryant who were defence counsel at the trial of Paul Bernardo. They were particularly helpful because they had and shared insights which only the people on their side of the case could have. I spoke with Austin Cooper and Michelle Fuerst who are acting for Paul Bernardo's previous counsel. Because of ongoing investigations respecting their clients, they properly declined to be interviewed.

Shortly after this inquiry was established, The Honourable Mr. Justice Archie G. Campbell was appointed to inquire into the police investigation. I decided that I should be careful to ensure that I did not inquire into areas that fell within his jurisdiction. Nevertheless, I did meet with Chief Constable Grant Waddell and Inspector Vincent Bevan of the Niagara Regional Police Service ("the Niagara Police") and Acting Inspector Anthony Warr of the Metropolitan Toronto Police ("the Metro Police").

I made contact with the Mahaffy and French families through their solicitor, Timothy Danson, and Jane Doe and her parents through their solicitors, Dennis O'Connor and Freya Kristjanson.

It was possible to conduct the vast majority of interviews in Toronto. It was, however, necessary to go to Ottawa on December 22, 1995 to meet George Thomson who was Deputy Attorney General on May 14, 1993 when the resolution agreement was entered into between the Crown and Karla Homolka. David Humphrey and I spent from January 21 through January 25, 1996 in Burlington, St. Catharines and Niagara Falls where we met with the Mahaffy and French families, Jane Doe and her mother, Raymond Houlahan and Gregory Barnett, Chief Constable Waddell and Inspector Bevan, and George

Walker. The only other trip out of Toronto was on February 6, 1996, when David Humphrey and I went to Kingston to meet with Karla Homolka and George Walker at the Prison for Women.

In an appendix to this report I have listed those persons who were interviewed during the course of the inquiry. Most of the interviews were conducted in person and only a few by telephone.

The great majority of time spent on the inquiry was in the review of the very extensive documentation which we obtained from the Crown Law Office and from the Green Ribbon Task Force. Many hours were spent analyzing that documentation and large portions of the proceedings at the trial of Paul Bernardo.

In an inquiry such as this there are always administrative matters which have to be dealt with. From time to time, it was necessary for me or for David Humphrey to communicate with the Ministry of the Attorney General about them. Because the inquiry was related to the Criminal Law Division, it was agreed that our communication with the Ministry should be through the Civil Law Division. Scott F. Feltman of that division was the person designated to deal with all of our administrative problems. I want to acknowledge and thank him for his courteous, helpful and very efficient handling of each and every matter which we raised. It was a pleasure to deal with him.

Practically all of the Toronto interviews were conducted at the facilities of ADR Chambers. I would like to express my gratitude to my colleagues and the staff at that organization for their assistance and support throughout. I would also like to express my appreciation to Catherine MacPherson and Donna Paton who were so helpful in the preparation of the report.

Tanya Goldberg, who was a marvellous Law Clerk with the Court of Appeal for Ontario and who is now a member of the litigation team at Osler, Hoskin & Harcourt, helped with the final revision and editing of the report. She was of inestimable help to me.

When I was asked to undertake this inquiry, I said I would only do so if the Attorney General would provide me with a top flight member of the criminal defence bar to act as my counsel. I was fortunate indeed that David M. Humphrey was able to re-arrange his busy schedule in order to undertake the task. His help has been invaluable to me. He brought to the task a broad and thorough understanding of the criminal law, his practical experience as a counsel in the Crown Law Office and his many years of practice as a defender. He always provided good counsel, boundless energy and a keen sense of humour which often eased the tension which a case as hideous as this one tends to produce. I am indebted to him.

The opinions which I express and the conclusions which I have reached are entirely mine. No one shares the responsibility for them with me.

INTRODUCTION

This inquiry was established because of a profound and widely felt sense of public disquiet at the fact the Karla Homolka is serving only 12 years for her part in the commission of horrible offences against four young women. Three of those victims died. At the heart of the issue are two decisions taken by the Crown¹ with respect to Karla Homolka. One was taken in the spring of 1993 and the other, two years later, in May of 1995.

I will discuss those decisions in considerable detail later in this report. What I think is important to keep in mind is that those decisions were not made in a vacuum. While they directly concern Karla Homolka, they were taken in connection with a prosecution for murder against Paul Bernardo. The decision taken in 1993 was made so that there would be sufficient evidence to support a prosecution against him for murder. The decision taken in 1995 was made in an effort to support that prosecution. It seems appropriate to me, therefore, at the outset, to remember what

¹Throughout this report I will use the expression "the Crown". It is, therefore, advisable to explain what I mean when I use that expression. The Attorney General is, by law, charged with prosecuting offences committed in Ontario in violation of the *Criminal Code*, and is, in effect, the province's prosecuting authority. The Attorney General acts through agents including law officers, Crown Attorneys, Assistant Crown Attorneys and Crown counsel. Unless by context or by reference to a specific person a contrary intention appears, when I use the expression "the Crown", I refer compendiously to those persons who perform the duties of the prosecuting authority.

kind of a man the Crown was facing when it made those important decisions.

Paul Bernardo was born in August, 1964. From the time of his birth until late 1990, he lived in Scarborough. He developed a habit of prowling by night. One summer evening he looked into the windows of a house and watched a young woman as she arrived home from work and prepared for bed. He obviously had been stalking her previously because he knew when she finished work and he waited for her to return home. He watched as she carried out her nightly routine of having a cup of coffee, changing her clothes for bed, using the bathroom and reading before going to sleep. He knew that she was alone in the house.

The next night as the young woman was walking home from her bus stop, Paul Bernardo hid in some bushes near the sidewalk. As she walked by the bushes, he emerged and grabbed her from behind, putting his gloved hand around her nose and mouth. When she screamed and struggled, he told her to shut up, put a knife to her throat and said that if she kept making noise he would kill her. He then dragged her to the side of a house, forced her to the ground and called her a bitch. Paul Bernardo then announced to her that he was the "Scarborough rapist". Indeed, unfortunately for her, he was.

He held her by the hair and pulled off her vest. He stuffed the vest into her mouth to keep her from screaming. He removed her shorts and underpants and lifted her top and brassiere. He ran his knife over her face and said that it would be a shame if her pretty face were to be scarred. He then forced vaginal intercourse upon her from behind. He followed that by forcing anal intercourse upon her. When she screamed in pain, he again stuffed her vest into her mouth and struck her on the head with his knife, threatening to kill her if she screamed again. When she stopped crying out, he demanded that she tell him about her intimate relations with her boyfriend.

He then grabbed her by the hair and forced her to perform fellatio upon him. Whenever she attempted to slow down or stop he would hit her and threaten to kill her. He accused her of performing poorly and again threatened to kill her. He removed a ring given to her by her boyfriend and threw it away, saying that her boyfriend was cheap. He then ran the blade of his knife along her body, pushed her to the ground, and again forced vaginal intercourse upon her from the rear.

During the course of the continuing assault, Paul Bernardo told his victim that she must call herself "a cunt", "a bitch", "a slut" and thank him for being so nice to her. He repeatedly told her as he continued his atrocity, "you love it bitch". He stole her purse containing her identification, driver's licence, social

insurance card, birth certificate, bank card, address book and some money. He threatened to get her and her family. He then tied her hands together in front of her with twine and tied them to her neck. He used her belt to bind her legs together. He then left.

Shortly afterwards, however, he returned. He put his knife to her neck and said "now we are going to have some fun". He thrust his fingers into her vagina and then tried to insert a twig. Finally he stopped and left for good. The ordeal lasted for two hours.

The young woman managed to untie herself and get help. She was taken to the hospital by the police. Her injuries included bruising under both eyes, a cut inside her lower lip, a bruise to her right ear, a bruise on her forehead above the left eye, a superficial laceration to the right side of her neck, abrasions to both of her knees, and bruising on the back of her neck.

The horror which this victim endured is described in vivid detail in her written victim impact statement which was filed on the dangerous offender proceedings taken against Paul Bernardo after the completion of his trial for murder. Since that night, now many years ago, this woman has lived with terror, fear of being alone, and the inability to love, to trust or to lead a normal life. She has swayed between living and not living. She is exhausted both physically, by an inability to sleep, and

emotionally. A normal, healthy, productive and happy person has been indelibly scarred for the rest of her life. She was not the first of Paul Bernardo's victims, nor would she be the last. Three of his later victims lost their lives.

The number of rapes Paul Bernardo has committed is unknown. He formally acknowledged thirteen sexual assaults during the dangerous offender proceedings. Eleven of them were rapes. If Karla Homolka is believed, he admitted to her that he had done more than that, perhaps as many as twenty-five.

The rapes which he has acknowledged bear many similar hallmarks. Most, but not all, occurred in Scarborough. They normally happened at night in quiet, residential areas. The victim was usually young and petite and, if not a teenager, she would give the appearance of being one. Paul Bernardo, on the other hand, was 6'1" and weighed 180 lbs. He would grab her from the sidewalk, put a knife to her throat and take her to a secluded area behind or beside a nearby building. He would rape her vaginally from the rear and anally and force her to perform fellatio upon him. He would threaten her and sometimes cut her with his knife. He would beat her. He would insult her and force her to call herself degrading names. He would order her to praise him. He would sometimes tie her with her neck attached to her limbs or, as in one case, to a nearby fence. He would steal her personal effects, including identification. Sometimes he would insert foreign

objects, such as twigs, into her vagina or anus. He broke the arm of one of his victims. A medical examination of each victim would show significant injuries or marks of the violence he had inflicted.

The first of the acknowledged rapes occurred in May of 1987 and the last in April of 1991. The investigation of these rapes led the Crown to some important information about Paul Bernardo. This information came from an opinion given to the Metro Police by Supervisory Special Agent G.O. McCrary of the Federal Bureau of Investigations. Special Agent McCrary is a criminal investigative analyst with the National Centre for the Analysis of Violent Crime ("N.C.A.V.C.") in Quantico, Virginia.

N.C.A.V.C. is a behavioral science and computerized resource centre which consolidates research, training and investigative support functions to assist law enforcement agencies with violent crimes which are particularly complex or bizarre. Since 1981, N.C.A.V.C. has focused its research capabilities upon serial killers and severe sexual offenders, utilizing behavioral science methodology to develop a reliable data base and analytical framework for use in law enforcement. The unit reviews and studies information contained in hundreds of cases which are submitted each year for consultation purposes. The foundation of N.C.A.V.C.'s data base is empirical research into the case histories of numerous

serial killers and serial rapists (each being responsible for at least ten such offences), many arsonists, child abductors and thirty sexual sadists.

The Metro Police provided Special Agent McCrary and his colleagues at N.C.A.V.C. with the information then available about the first eight reported offences of a then unknown offender, later called the Scarborough rapist, for them to study. Special Agent McCrary identified the Scarborough rapist as a sexual sadist because he psychologically abused his victims and used more force than was necessary to subdue them. He displayed violent conduct during the commission of the offences including punishing and beating the victims.

Special Agent McCrary believed that, as time passed, the sadistic component of the Scarborough rapist's actions would continue to grow. He predicted that the danger posed by this offender would escalate. He said that research has shown that the sexually sadistic offender will not stop of his own volition. Such an offender is only stopped by external forces: that is, he either dies or is incarcerated. The offences may cease in a given area, because the offender has moved, but he generally starts re-offending in the area to which he has relocated.

In the case of Paul Bernardo, he moved from the Scarborough area and the offences attributable to the Scarborough rapist

ceased. Within a short time of Paul Bernardo's arrival in St. Catharines, a rape occurred in close proximity to his new home. That rape demonstrated the same *modus operandi* used by the Scarborough rapist which I have described previously.

Special Agent McCrary predicted an escalation in the nature of the offences based upon a life style change. In the case of Paul Bernardo, while living in Scarborough, he was in a home which was controlled by his parents. Once he moved to St. Catharines, he had a home of his own, over which he was able to exert complete control. This change in his circumstances aided him in the escalation of his offences to the point where he could bring his victims to a place which he controlled.

Special Agent McCrary expressed the view that abduction is a predictable progression for the sexual sadist. However, abduction of a victim virtually guarantees that murder will result. There are two reasons for this. The first is the offender's desire to prevent the victim from later identifying him. The second is that as the sexual sadist's fantasy escalates, he needs more control and gains that control through abduction and forcible confinement of his victims. The ultimate fantasy of a sexual sadist is to totally possess his victims both physically and psychologically. He seeks to achieve control over their lives and ultimately over their deaths as well.

Special Agent McCrary predicted that some of the Scarborough rapist's victims would be killed. He thought that the unknown offender demonstrated almost all of the characteristics which are typically found in the sexually sadistic serial killer. According to him, the N.C.A.V.C. research found that the sexually sadistic serial killer exhibits a high degree of predictability in his criminal behaviour. He believed that it was not a question of whether but when the unknown offender would strike again. Since there is no limit to the appetite for sadistic gratification, it is only a question of time until his next victim does or refuses to do something which he perceives to be a threat to his control over her. Special Agent McCrary said that documented case histories demonstrate conclusively that offenders like the Scarborough rapist cannot stop raping and killing. They can only be stopped.

Once the investigation focused on Paul Bernardo as the Scarborough rapist, police surveillance showed that he was a night-time prowler who watched bus stops and shopping malls for women and demonstrated conduct consistent with the stalking of females.

Paul Bernardo was later diagnosed to be a psychopathic sexual sadist. This diagnosis was not made before the Crown's decision in the spring of 1993. However, based upon the opinion of Special Agent McCrary and the Crown's knowledge of the violent

circumstances of the Scarborough rapes, the Crown believed that Paul Bernardo was an extremely dangerous person who had killed and, if the opportunity presented itself, would likely kill again.

In October 1987, when Paul Bernardo met Karla Homolka, he had already committed two of his acknowledged rapes. He was a university graduate studying to be a chartered accountant. He had passed his pre-admission tests and was articled to a firm of chartered accountants. He had also had one abusive relationship with a young woman, J.M.G., whom he had dominated for about three and a half years. When Karla Homolka met Paul Bernardo she was a 17 year old high school student who was taking a semester off school to work in a pet shop. She came from and lived with a supportive middle-class family. Her only prior sexual experience had been with a fellow high school student who had briefly been her boyfriend. Insofar as the police have been able to determine, she had never been in trouble before.

When the Crown was called upon to make its decisions respecting the prosecution of Paul Bernardo, it knew that it was dealing with a person who had shown himself to be extremely violent and dangerous. It also knew that the other person, Karla Homolka, had been a relatively inexperienced, law-abiding teenager until she met him.

FACTUAL REVIEW

It will be necessary to review in some detail the circumstances surrounding the two decisions of the Crown to which I am directed by the terms of reference. I think it is appropriate at the outset to give a broad outline of the facts which led to the making of those decisions. It is, I think, implicit in the verdict of the jury which convicted Paul Bernardo of murder that, where there was a conflict between the testimony of Paul Bernardo and Karla Homolka, the jury accepted her evidence. For that reason, when I discuss the facts, I will refer to the version given by Karla Homolka when it is in conflict with that given by Paul Bernardo.

There runs throughout this awful story the question of whether Karla Homolka acted with volition when she participated with Paul Bernardo in unspeakable atrocities or whether as the victim/accomplice of a psychopathic sexual sadist she acted involuntarily because she was unable to extricate herself from his complete domination and control. I am unable to answer that question and, as I will later explain, it was a question which divided the jury. It was not necessary for the purpose of determining the guilt of Paul Bernardo on the murder charges for the jury to decide the question. Nevertheless, for reasons which I will develop later, it was something which could have had a

bearing on the appropriateness of the decision taken by the Crown in the spring of 1995. Because the question of domination and control is one which cannot be avoided, even if I cannot answer it, it is necessary that I start my factual review in 1984.

There is no doubt that Paul Bernardo is a sexual sadist. The first evidence of that comes from a woman by the name of J.M.G. Karla Homolka and J.M.G. have never met or spoken with one another. J.M.G. was a 16 year old high school student when she met Paul Bernardo in the summer of 1984. They were introduced by a mutual friend. At that time, Paul Bernardo was 20 years of age and a university student. She was pleased by his interest and attracted by his attention toward her. J.M.G. told the police that she was quite naive and innocent and that he gradually began a conditioning process which altered her behaviour so that he gained control over her life. He began a process of degrading her. He criticized her family and religion. He isolated her from her friends and built up his own importance. He said that he was great, that he was the best, that he was the king and that she was just a little servant girl.

In its earlier stages, their sexual activity involved her performing fellatio upon him. He would grab her by the head and force her head onto his penis. She said he would become sexually aggressive between 11:00 p.m. and 2:00 or 3:00 a.m. Their sexual activity progressed to vaginal intercourse and then to anal

intercourse which she found very painful. When she expressed fear and pain he would become excited and then satisfied. She said that he then began vaginal and anal insertion of bottles. "It was like one thing wasn't good enough for him, he had to get more violent - he was just getting more weird". He began to hold a knife to her throat during anal intercourse; when she exhibited fear, he became more excited. She said that he carried the knife in his car with him and threatened to kill her if she ever left him.

He tied a rope around her neck at one time while having anal intercourse with her and on another occasion he handcuffed her. He insulted her by calling her a slut. He took a picture showing her semi-nude and threatened to post it in her church if she did not comply with his wishes. J.M.G. said that she became Paul Bernardo's "little servant girl, playtoy".

One night, near the end of their relationship, he locked her in his car and hit her on the head and in the face. He smashed her head against the window and punched her in the back, leaving marks from his hand through her clothes. He pulled hair out of her head. He said that he was going to take her somewhere and kill her. When he stopped the car, she escaped, but he pulled her back into the car and attempted sexual intercourse. He grabbed a clump of her pubic hair and then began hitting her. He said that he was going to kill her and, in a frenzy, began looking for his knife. She again escaped, this time successfully, and fled to the home of a

friend. She avoided him after that and, after a few attempts to get in touch with her, he appears to have lost interest in her. She fixed the date of that last occasion as being in November, 1987. Paul Bernardo met Karla Homolka in October of the same year.

On May 4, 1987, Paul Bernardo committed the first of his acknowledged rapes. He raped a 21 year old young woman who was walking home from a bus stop some time around 1:00 a.m. The victim almost made it to her home but he grabbed her as she reached her front lawn. He threw her to the ground, beat her and raped her both vaginally and anally. The assault lasted more than half an hour. A medical examination later disclosed facial swelling and bruises on her arms and breasts.

Paul Bernardo's second acknowledged attack occurred a few days later. On May 13, 1987, a nineteen year old young woman was walking from the bus to her home in the early morning hours. She reached the driveway in front of her home and was half-way to her house when Paul Bernardo grabbed her from behind and dragged her into the back yard. He punched her in the face and stomach. She began to scream and started to struggle. He produced his knife and put it against her throat. He told her he would slit it if she did not keep quiet. He put a cord around her neck and tightened it when she tried to move. He took identification and pictures from her purse. He bound her wrists and tied her neck to a fence with her belt. This victim did not report actual intercourse, but said

that the attacker was trying to touch her private parts. She suffered bruises to both eyes and marks on her arms, wrist and hands.

The meeting between Karla Homolka and Paul Bernardo took place on October 17, 1987 in the restaurant of a hotel where she was staying while attending a pet shop convention. She was 17 years old and in grade 12. He was 23 years old and articling in a chartered accountant's office. It is not necessary to describe the meeting or events in any detail except to say that within an hour or two of their meeting they engaged in sexual relations in her hotel room. She invited him to a party at her home in St. Catharines the following week-end.

He became a frequent visitor at her home and spent many weekends there. They often had sexual relations which she described as normal, vaginal intercourse which she enjoyed. In the beginning, he treated her very well: "like a princess", as if she were "the only girl in the world". He was attentive and considerate to her and respectful to her parents. He took her out to dinner, bought her flowers, took her to the movies and took part in activities with her friends.

While his romance with Karla Homolka was developing, Paul Bernardo continued his activities as the Scarborough rapist. On the evening of December 16, 1987, at about 8:30 p.m., a 15 year old

young woman was walking home from a bus stop when Paul Bernardo grabbed her off the sidewalk and took her at knife point to a space between a trailer, parked beside a house, and a fence. The details of the offence, like the others, are shocking and frightening. It was a repetition of the other attacks involving vaginal and anal intercourse while the victim's head was pushed into the ground. He ran his knife along the victim's back, then grabbed her by the hair and pounded her head against the ground. He forced her to perform fellatio then to lick his penis and say that she loved it. He made her wish his penis a Merry Christmas. He stole identification from her purse and then ordered her to crawl under the trailer and stay there until he left. The assault lasted an hour. Medical examination disclosed a torn hymen, two tears in her anus, plus a number of abrasions on other parts of her body.

On December 23, 1987, Paul Bernardo raped again. Late at night, a 17 year old young woman was walking home from the bus when he grabbed her from the sidewalk. He held his knife to her throat, covered her mouth with his other hand and told her to shut up or he would kill her by slitting her throat. He punched her on the back and side of the head and made her walk beside a house where he forced her to the ground. He held her hair and pushed her face into the dirt. He called her a bitch and a slut. He then forced vaginal intercourse upon her from the rear. He ran his knife up and down her back and threatened to scar her face forever if she screamed. He then forced his penis into her anus. The victim also

thought that he put his knife into her vagina. He repeatedly forced her to say that she was a bitch and a cunt and to wish him Merry Christmas and to say that she loved him. He repeatedly entered her vagina and anus becoming more excited when she repeated that she was a bitch and a cunt. He took her identification. He said that he knew where she lived and would return and stab her to death if she told anyone about what had happened. He then forced her to perform fellatio upon him. Afterwards, he tied her up and left. A medical examination later disclosed that she had a laceration of the uterus, together with other injuries.

Two days later, on Christmas, Paul Bernardo gave Karla Homolka expensive gifts including a gold chain and a dress. She said that he swept her off her feet. Soon after Christmas, however, his treatment of her began to change subtly and very gradually. He started to exercise control over her. He began telling her what to wear and how to style her hair. He told her where she could go and where she could not go. He began to encourage her to disassociate herself from her friends because they were immature and stupid. He began encouraging her to drink more and more alcohol. He began changing the nature of the sexual activity in which he wanted her to engage. He asked her to perform fellatio. Initially, she did not want to. He insisted and told her that "she was going to do it". Eventually, she gave in and began performing fellatio on him. He then wanted her to say and repeat until he told her to stop certain things such as, "My name is Karla, I am 17 years old. I am

your little cocksucker. I am your little cunt. I am your little slut". He told her to say insulting things about her former boyfriend.

She said that, as these changes were taking place, he stopped caring about whether their sexual activity was pleasing to her. He became concerned only with his own gratification.

On April 18, 1988, Paul Bernardo raped again. Late that night he hid in some bushes and grabbed a 17 year old young woman as she walked from the bus to her home. He held his knife to her throat and threatened to kill her. He dragged her into a back yard, punched her on the head and forced her to her knees. He raped her vaginally from the rear and then he raped her anally. He told her to say that she liked it. He alternated between anal and vaginal penetration and ran his knife up and down her back. He made her call herself a pig and a dirty bitch and say that she loved him and liked what he was doing to her. He stole her identification, including a photograph TTC pass, and her bank card. He threatened her and her friends saying that he knew where she lived because he had followed her before. He pulled so hard on her left arm that he broke it. A medical examination showed that she had a freshly perforated and bleeding hymen, a fracture of the left humerus, multiple bruises and abrasions on various parts of her body and a laceration on her forehead.

Paul Bernardo struck again on May 30, 1988. This time it was in Mississauga. An 18 year old young woman was returning to her home around 1:30 a.m. when he grabbed her. He called her a bitch and told her not to scream or he would kill her. She began to struggle but stopped when she saw that he had a knife. He dragged her into a wooded area where he raped her vaginally from behind and then anally. He rubbed his knife over her body and threatened to kill her. He ordered her to say that she liked what he was doing and that she loved him. He made her call herself a slut. While raping her, he banged her head on the ground and repeatedly hit her. He took her clothing and said that if she told the police he would kill her. He tied her arms and legs and then left.

Later, a medical examination disclosed multiple scratches and abrasions of her body from the neck to the ankles, a grossly swollen upper lip with abrasions, and twig and bark-like material in her anal area.

By late spring or the early summer of 1988, Paul Bernardo had prevailed upon Karla Homolka to allow him to have anal intercourse with her. She did not like it and found it very painful. She said that afterwards he would often threaten to have anal intercourse with her if she did not do what he wanted. He later had her wear a dog chain choke collar while he had intercourse with her from behind. Sometimes he pulled so tightly that she could not breathe. She said that anal intercourse was his preferred method of having

sexual relations with her. He began photographing their sexual activity with a Polaroid camera which he purchased.

Karla Homolka said that Paul Bernardo began beating her during the summer of 1988. After the first beating, he apologized to her. Nevertheless, she felt guilty, and thought that she had brought it upon herself by arguing with him. On three occasions that summer he used physical violence upon her. She would take the blame for these incidents. She said that between the incidents he would treat her nicely and that they had "some fun times". He began periodically to call her names like slut, bitch and cunt. At first he would say those things to her in private. Later, he began saying them in public. On other occasions he would call her affectionate names like "princess". She said that calling herself disagreeable names seemed to be a turn-on for him and that he began ordering her to do so. As time went on, she said that she became more and more under his control.

In the autumn of 1988, Paul Bernardo raped again. Just before midnight on November 16, 1988, he attacked an 18 year old young woman who was walking home from work. He threatened her with a knife and forced her into a back yard. He raped her vaginally from the rear. He made her call herself a slut and say that she liked it. He stole her identification. Medical examination revealed a tear to the labia minora, a bruise on the vaginal wall, lacerations

to the legs, one of which required suturing, abrasions and bruising to the head and arms.

His next attack was on December 27, 1988, shortly after 9:00 p.m. Paul Bernardo followed a 23 year old young woman home from her bus stop and, as she walked up her driveway, hit her on the head and knocked her to the ground. The victim screamed and fought. He grabbed her in the crotch area. Neighbours heard her screams and came to their door. One of them chased him but Paul Bernardo escaped.

Throughout 1989 the relationship between Paul Bernardo and Karla Homolka continued. She said that he became increasingly critical of her. He called her "stupid" and repeatedly said that she was a "fucking idiot". She said that he yelled and screamed at her. Nevertheless they planned their marriage.

On August 15, 1989, Paul Bernardo raped again. It was the rape which I described in the introduction to this report. I will not describe it again.

Some time during the summer of 1989, Karla Homolka met Jane Doe (a pseudonym). Jane Doe was at the time a 13 year old who was interested in animals. She frequented the pet store where Karla Homolka was working. They became friends. Jane Doe regarded Karla

Homolka as the elder sister whom she never had. Two years later, they would begin to see a great deal of one another.

On November 21, 1989, Paul Bernardo raped again. At about 1:15 a.m. he entered a bus shelter in North York where a 15 year old young woman was waiting for a bus. He put one hand over her mouth and his knife against the back of her neck. He threatened to kill her if she screamed. He forced her to go to a nearby building where he ordered her to her knees. He pulled her hair like a horse's rein. He forced vaginal intercourse upon her from the rear and then anal intercourse. He tied her wrists together and her ankles together, after which he tied her ankles and wrists together with a rope running down her back. A medical examination revealed bruises on the victim's knees, wrists, ankles, right breast and on the right side of her forehead. As well, there were two lacerations on her arms.

In early December 1989, Karla Homolka began working at the Martindale Animal Clinic in St. Catharines as an animal health technician. Her duties included preparing animals for surgery. At the clinic, in a drug compendium kept for the clinic's business, she learned about a drug which has the generic name triazolam. It is a sleeping pill which is commonly prescribed and is marketed under the name Halcion. As part of her duties, she became aware of

a substance called Halothane. It is an anaesthetic for animals. Halothane is usually applied using an anaesthetic machine which combines it with oxygen.

On December 22, 1989, Paul Bernardo raped again. At approximately 2:30 that morning, a 19 year old young woman parked her car in the garage of her apartment building and walked towards the elevator. He was in the garage and grabbed her, put her in a half-nelson hold and pushed her into a stairwell. He raped her vaginally from behind and anally. He put a sharp object against her throat and threatened to kill her if she did not shut up. He removed her clothes, said he would be back in a few days and left. On medical examination, there were marks of trauma in her anal and vaginal areas, together with bruises and abrasions on other parts of her body.

Two days later, on December 24, 1989, Karla Homolka and Paul Bernardo became engaged to be married. Later, they fixed their wedding date for June 29, 1991.

Karla Homolka said that by the spring of 1990, Paul Bernardo was calling her his sex slave and she referred to herself as such. She said that she would do whatever he told her to do and she would do it whenever he told her to. If she refused to do what he asked, he would verbally abuse her, threaten her or physically strike her. In her many statements to the police and in her testimony at the

trial of Paul Bernardo, Karla Homolka related in great detail an ever increasing cycle of physical and psychological violence toward her which wore her down so that she became more and more subject to his control. It is not necessary to recite those details.

On May 26, 1990, Paul Bernardo raped again. Shortly after midnight a 19 year old young woman left the bus to walk home. He followed her for a distance then grabbed her, threatened her with a knife and cut her along the line of her jaw. He carried her into a nearby schoolyard where he called her a bitch and forced her to her knees with her face towards one of the walls of the school. He tied her hands tightly behind her back with twine and also tied her ankles. He forced vaginal intercourse upon her from behind with such force that he banged her face against the school's wall. He struck her on the shoulders when she tried to speak. As he was leaving he said that if she moved before he counted to 50, he would return and kill her. He left but returned. He scratched her throat with his knife and ran it around her genital area. He put his fingers in her anus. He then inserted his penis into her anus causing her great pain. He withdrew from her anus and said to her that he bet that she liked it. He then turned her around and threatened her with death. He made her perform fellatio upon him. Again he pretended to leave her but he returned. He fondled her buttocks and genital areas and bit her breasts. He grabbed a handful of her pubic hair and ripped it out as something to

remember her by. He also took her identification from her purse. He finally left her alone.

Her medical examination revealed a laceration to the right cheek requiring four sutures, a 1 ½ cm. laceration to her labia, a bite mark on her left breast and abrasions to her face, neck, both knees, wrists and ankles. I have read this woman's victim impact statement. The damage which this hour of torture has done to every aspect of her life is unimaginable and indescribable.

Karla Homolka said that by the autumn of 1990, Paul Bernardo's abuse of her was increasing in its intensity and in its frequency. She described an incident where, after an argument, he drove her to a remote location where he beat her and kicked her in the back, shoulders, leg and stomach. He knocked her to the ground. Her clothes got muddy. She apologized to him for arguing with him. He took her home and told her to change so that her mother would not see her in that condition. She said she did not tell her parents what he was doing. She still loved him. She said that her confidence level was very low. The physical abuse continued to increase. He made threats of violence toward her and her family. She said that he could be very charming and that he had a magnetism about him which gave him a kind of power over women. Notwithstanding her fear of him, she said that she continued to love him.

I must digress to say that I was very sceptical about her statements that she was subjected to violence and threats to the point where she was in such fear of him that she would do his bidding, no matter how monstrous, yet she still loved him and would not rid herself of him. I was sceptical for two main reasons. The first is that help was in her home. She lived with her parents and could have gone to them for help. The second is that she gave the appearance to others, even intimate friends, that everything was wonderful between her and Paul Bernardo. It will be necessary to return to this issue later in my report but, for the moment, I will simply note that during the course of the inquiry I read a paper entitled "Compliant Victims of the Sexual Sadist". That paper has caused me to have an open mind on this issue because it documents similar phenomena occurring to women other than Karla Homolka. A copy of the paper is an appendix to the report.

In the course of their investigation of the Scarborough rapes, the Metro Police developed a composite likeness of the rapist. That composite began appearing in the Toronto press on May 28, 1990. It bore a striking resemblance to Paul Bernardo. As a result of a tip that Paul Bernardo was the person represented in the composite and some other information which they had obtained about him, the police decided to interview Paul Bernardo as a suspect in the Scarborough rapes.

On November 20, 1990, Paul Bernardo went to police headquarters in Toronto where he was interviewed. He told the police that he was engaged to Karla Homolka and planned to move to St. Catharines to live with her. He said that they were going into business together. When asked, he said he could not remember where he had been on May 26, 1990 at the time of the most recent rape. He said that he had probably been with his girlfriend. He voluntarily provided samples of saliva, blood and hair to the police.

That evening, he went to St. Catharines and told Karla Homolka about his interview with the police. He assured her that he was not the Scarborough rapist, but that he was worried that some mistake might be made with the testing and that he might be identified mistakenly. She said that he was worried that the authorities might "mess up on the forensic evidence" to his detriment.

During the spring, summer and autumn of 1990, Paul Bernardo began making bizarre suggestions to Karla Homolka. He started telling her that he wanted to have sex slaves available to him. He said that he wanted girls brought to him at the Homolka home. He also started asking her to pretend that she was her younger sister, Tammy, while they were having sexual relations. At the time, Tammy was 15 years old and lived at home with the family.

According to Karla Homolka's testimony, some time in the fall of 1990 Paul Bernardo told her that he wanted to have sex with Tammy. He said that it could only be done if Tammy were drugged, that it would only take a few minutes and be over quickly. She said that she was totally opposed to the idea but was subjected to threats and violence and that Paul Bernardo made threats against her family. She understood that if she agreed to help him with his plan, the violence to her and the threats to her and her family would cease. Finally, in December, she agreed because of the threats and beatings she was receiving and the threats which were being made against her family. She said that Paul Bernardo told her to get the necessary drugs through her work. She obtained Halcion to put Tammy to sleep and Halothane to keep her asleep during the assault.

On December 23, 1990, the Homolka family was at home. Paul Bernardo was visiting them. During the afternoon, he told Karla Homolka that he wanted Tammy that night as his Christmas present. She said that she begged him not to do so but he insisted. After dinner, Karla Homolka, Tammy and Paul Bernardo went to the recreation room to watch a video. Alcoholic drinks were served. Paul Bernardo put Halcion in Tammy's drink and Karla Homolka served it to Tammy. The other members of the family retired for the night. More drug-laced drinks were served to Tammy and eventually she fell asleep. Paul Bernardo undressed her. Karla Homolka obtained Halothane, put some on a cloth and held it to Tammy's face

while Paul Bernardo raped her. He raped her vaginally. Karla Homolka said that he then ordered her to commit sexual acts on Tammy including performing cunnilingus and kissing her breasts. Paul Bernardo then resumed having both vaginal and anal intercourse with Tammy. Much of the sexual activity by both of them was videotaped. Shortly after Paul Bernardo stopped raping her, Tammy vomited. They then noticed that she was not breathing. Artificial respiration was unsuccessfully attempted. Karla Homolka called 911. She and Paul Bernardo dressed Tammy, moved her to her bedroom, disposed of the Halcion in a toilet and hid the remaining Halothane. An ambulance arrived and took Tammy to the hospital. She did not survive.

Karla Homolka and Paul Bernardo told the police that Tammy had vomited and had stopped breathing. They did not disclose to the police the true details of the death and they hid or disposed of any evidence which might have disclosed the truth. The death was ruled accidental and the investigation of it was closed.

After Tammy's death, Paul Bernardo stayed on in the Homolka home for a few weeks. In approximately the middle of January, 1991, Mr. and Mrs. Homolka asked him to leave so that their family could grieve in private. He was outraged that he was asked to leave and vowed never to return to the home. He lived in motels in the St. Catharines area for a short time. In late January he rented and moved into 57 Bayview Drive in Port Dalhousie, which is

adjacent to St. Catharines. Shortly afterwards, he began smuggling cigarettes from the United States into Canada. That was how he earned his living from then until his arrest and incarceration in February of 1993.

At some time shortly after Tammy's death, Paul Bernardo told Karla Homolka to replace the Halcion which had been destroyed on the night of Tammy's death. She complied. She said that she felt totally trapped after Tammy's death and became more and more subject to Paul Bernardo's domination. She moved into 57 Bayview Drive with him. She said the verbal and physical abuse increased in frequency and severity and had added to it his constant threat of exposing her part in Tammy's death. She said that some of the physical abuse resulted in bruises which she covered with makeup or explained as having occurred in various types of accidents or misadventures. There is some independent confirmation from fellow workers that for months and years prior to January of 1993, she had bruises on her which her colleagues noticed. One of her colleagues thought that some of the bruises were in strange places where one would not expect to knock oneself.

Karla Homolka said that, by this time, she felt that she had to do whatever Paul Bernardo told her to do. She felt that she had no choice. At the same time, her wedding plans progressed. She maintained the appearance that all was well. She told friends, both verbally and in writing, how happy she was and how wonderful

the man was whom she was going to marry. She wrote a truly nauseating, reprehensible letter to a friend in which she bitterly criticized her parents about the amount of time they were spending in grieving for Tammy and about the financial limit which they wanted to impose upon the cost of the wedding.

On April 6, 1991, at about 5:30 in the morning, a 14 year old young woman was walking on Henley Island. Paul Bernardo came up behind her and dragged her to a secluded area. He forced her to her knees and, from the rear, pulled her hair toward him. After several attempts, he forced his penis into her vagina. He then turned her around and forced his penis into her mouth and demanded that she perform fellatio upon him. He called her a little bitch and threatened that if she told anyone he would kill her. He took her jacket and left. Medical examination showed tears around the hymen, scratches to the left temple, left cheek and lower left leg and a contusion beside her left eye.

Paul Bernardo ordered Karla Homolka to bring young girls to 57 Bayview Drive so that he could develop sexual liaisons with them. In the spring of 1991, she invited two young women to the house. One of them was Jane Doe, who by that time was 15 years old. I will discuss the facts relating to Jane Doe in more detail when I deal with the second term of reference. For the moment, it is only necessary to say that Jane Doe became a companion of Paul Bernardo and Karla Homolka, and was a frequent visitor in their home until

December 22, 1992. On June 7, 1991, while at 57 Bayview Drive, an event occurred which involved her. I will discuss it later in the report.

In the early morning hours of Saturday, June 15, 1991, Paul Bernardo was prowling in a quiet, residential area of Burlington. He saw 15 year old Leslie Mahaffy near her home. He abducted her, blindfolded her and took her in his car to 57 Bayview Drive. The circumstances of the next few days are well known. In order to spare the Mahaffy family the agony of hearing the details recounted yet again, I will touch on only the essential facts. At 57 Bayview Drive, Leslie Mahaffy was raped by Paul Bernardo and forced to perform a number of other sexual acts with him and Karla Homolka. Portions of those activities were videotaped by them. On Sunday, June 16, 1991, Leslie Mahaffy was drugged and then Paul Bernardo strangled her to death. The next day he dismembered her body and encased its parts in concrete. That night or the next, he and Karla Homolka carried the body parts to nearby Lake Gibson where they threw them into the water. Karla Homolka thoroughly cleaned the house in an effort to eliminate all traces of their crimes.

Two weeks later, on June 29, 1991, Paul Bernardo and Karla Homolka were married. They went to Hawaii on their honeymoon. On their wedding night, Paul Bernardo told Karla Homolka that he was indeed the Scarborough rapist.

On the day of the wedding, the level of Lake Gibson was lowered and the parts of Leslie Mahaffy's body appeared. What had been a search for a missing person became a murder investigation. A joint task force composed of members of the Niagara Regional Police and the Halton Regional Police was formed to conduct the investigation. Inspector Vincent Bevan of the Niagara Police was appointed to head the task force. It would later be named the Green Ribbon Task Force.

On August 10, 1991, Jane Doe was a visitor at 57 Bayview Drive. While she was there another event occurred which involved her. It is something to which I will return later in this report.

The months between August 1991 and April 1992 can be described briefly. Karla Homolka said that Paul Bernardo's violence toward her and abuse of her continued unabated. Her evidence about it is extensive, but I do not think it is necessary to discuss it in detail. She said that she was often required to accompany him on trips in his car. He thought that she would make good cover for him since his car would not be suspected if there was a woman sitting in it. On several of those occasions, he brought his knife and rope. She described trips when he watched women. She described trips when he stalked women. She described occasions when he would follow women home and go to the windows of their houses and watch them through their windows as they prepared for bed. On at least one of these occasions, he videotaped a woman

through her window while she prepared for bed. She described plans that he was making to kidnap a woman whom he had stalked. She testified that Paul Bernardo began talking of getting a place in the country with a sound-proofed dungeon where he could take girls and use them as sex slaves.

In 1992, Holy Thursday fell on April 16th. At about three o'clock that afternoon, 15 year old Kristen French was walking home from school. While crossing a church parking lot, she was abducted by Paul Bernardo and Karla Homolka and taken to 57 Bayview Drive. In order to spare the French family the agony of hearing reported again the details of their daughter's last days, I will summarize briefly the salient facts. At 57 Bayview Drive, Kristen French was repeatedly raped by Paul Bernardo and forced to engage in other sexual acts with him and Karla Homolka. Much of that activity was videotaped by them. On at least two occasions during Kristen French's captivity, Paul Bernardo left the house to buy food and to rent videos. Notwithstanding the opportunity which she had to do so, Karla Homolka did not permit Kristen French to escape. On Easter Sunday, April 19th, Paul Bernardo strangled her. Her body was washed to remove potential evidence. That night Paul Bernardo and Karla Homolka took Kristen French's body to a rarely used country road near Burlington and left it there. Karla Homolka thoroughly cleaned the house in order to eliminate all traces of the crimes. Kristen French's body was discovered on April 30, 1992.

The months that followed until the end of the year need little comment. There seems to be ample support for Karla Homolka's assertions that she was the subject of continuous and unrelenting abuse at the hands of her husband. In June, she left him to go back to her parents, but returned when he threatened to expose her role in their crimes. If her evidence is truthful, there can be no doubt that Paul Bernardo's treatment of her through the last half of 1992 is nothing short of a horror story. It is somewhat of a surprise that she is still alive and sane.

In early January, 1993, Paul Bernardo administered a terrible beating to Karla Homolka. On January 5th, at the insistence of her co-workers, her mother and sister removed her from 57 Bayview Drive and took her to a hospital. Before leaving 57 Bayview Drive, Karla Homolka looked for the videotapes which she knew existed and which showed the sexual assaults on her sister, on Leslie Mahaffy and on Kristen French. She searched where she thought they were hidden but she was unable to find them.

At the hospital, a medical examination of Karla Homolka revealed that she had suffered serious injuries. A psychiatrist who later examined her, Dr. Hans Arndt, said that one of the doctors who saw Karla Homolka on her admission to hospital commented that she presented the worst case of wife assault that he had seen in his experience as an emergency room physician. Karla

Homolka's attending physician described the results of her physical examination as follows:

On examination today, Karla is in distress, quite anxious and understandably so. Her eyes reveal racoon's eyes, bruising all around the orbits, large contusion to her head with what feels almost like a depressed fracture, although x-rays have ruled this out. She has a subconjunctival haemorrhage in the left eye, which was seen by Dr. Marriott, and she was re-assured. She has several bruises down the left side of her neck, along her arms, with a very large bruise in the upper right arm which is about three centimetres by three. About 75% percent of her legs from mid-thigh down are bruised, quite dramatically and swollen to touch. She cannot move them due to pain. On the right thigh, about 3 cm. above the right knee, there is a puncture wound which she says was caused by Paul Bernardo when he punctured her with a screwdriver. On the left leg, there is a large isolated contusion about 6 inches by 3 inches, quite warm and tender.

During the course of my inquiry, I learned that "racoon eyes" are indicative of a very hard blow or blows to the back of the head. They are caused by a contra coup, which means that the blow from the rear causes the brain to move rapidly forward and collide with the front of the skull, causing bleeding or haemorrhaging into the tissue around the eyes.

Her beating was reported to the police and she gave a statement to them about it. As a result, a charge of assault was laid against Paul Bernardo who was arrested and then released on bail. Karla Homolka told the police nothing about matters other than the beating and made no attempt to get in touch with them later to reveal any information about the atrocities in which she had participated. On January 9, 1993, she was discharged from the hospital and went to live with an aunt and uncle, Patricia and Calvin Seger, in Brampton. Shortly afterwards, she consulted Legal Aid, then retained a lawyer to commence divorce proceedings. At that time, neither she nor Paul Bernardo were suspects in the Mahaffy and French murder cases.

On February 1, 1993, the Centre of Forensic Sciences advised the Metro Police that there was a preliminary DNA match between the bodily samples given to them by Paul Bernardo on November 20, 1990 and the bodily substances connected to three of the Scarborough rapes. The Metro Police traced Paul Bernardo to St. Catharines and put him under surveillance. They learned that he had separated from his wife. On February 4, 1993, they sent a message to Karla Homolka through her parents that they wished to interview her. On February 5, 1993, Karla Homolka called and arranged to meet with them at the Seger home during the evening of February 9, 1993. On the same date, the Metro Police invited Inspector Bevan to attend a meeting arranged for February 8, 1993 at police headquarters in Toronto.

On February 8, 1993, Inspector Bevan went to Toronto and met with a number of police officers engaged in the Scarborough rapist investigation. As a result of the information exchanged at that meeting, Paul Bernardo became a suspect in the Mahaffy and French murders. The following evening Metro Police officers interviewed Karla Homolka at the home of her aunt and uncle. She gave the police some background information regarding her life with Paul Bernardo and told them about the abuse to which she had been subjected. She did not tell them anything about the murders. When the police left, however, she told her aunt about her involvement in them. The next day she made an appointment with George Walker, a prominent criminal lawyer in Niagara Falls, and the following day she met with him and retained him to represent her. Her first meeting with George Walker led to a number of meetings and discussions between George Walker and the Crown. I will give substantial details about those events and others leading to the conviction and sentencing of Karla Homolka when I discuss the first term of reference.

As part of their investigation, the police began interviewing people who were known to be friends or acquaintances of Paul Bernardo or Karla Homolka. They wanted to learn whether either of them had said anything about the murders. One of the persons whom

they interviewed on February 16, 1993 was Jane Doe. They interviewed her as a potential witness and not as a possible victim.

Paul Bernardo was arrested on February 17, 1993. He has remained in custody ever since. He was arrested on charges relating to the Scarborough rapes and for the murders of Leslie Mahaffy and Kristen French. Within two days, charges relating to the rapes were laid. However, it would be three months before murder charges could be laid. When he was arrested there was no legally admissible evidence that he was implicated in the murders of Leslie Mahaffy and Kristen French or, indeed, that he had had any contact with either of them.

Search warrants were issued on February 19, 1993 and a search of 57 Bayview Drive began that day. The police conducted intensive searches of the premises. The search warrants were extended from time to time until they finally expired on April 30, 1993.

Because of Special Agent McCrary's opinion that a sexual sadist is likely to videotape sexual activities and keep the videotapes, and because of other information from one of Paul Bernardo's friends, the police thought it likely that there were compromising videotapes in the house. The police looked for them during their search. However, their search did not lead the police to any videotapes incriminating either Paul Bernardo or Karla

Homolka except for a very small segment of an otherwise innocuous tape. That particular videotape was found on February 22, 1993. Later in this report, I will refer in more detail to that segment of videotape.

As of April 30, 1993, the police search had uncovered no videotape which in any way connected Paul Bernardo with either Leslie Mahaffy or Kristen French. I will return to this issue but, for the moment, I must note that on April 30, 1993 the police had no evidence which could justify charging Paul Bernardo with murdering either of the two girls or, indeed, any evidence which could prove that he had any contact with either of them.

It is now well known that videotapes did exist which contain explicit evidence of sexual attacks by Paul Bernardo and Karla Homolka on Tammy Homolka and Jane Doe, and explicit evidence of the confinement and sexual attacks by Paul Bernardo and Karla Homolka upon Leslie Mahaffy and Kristen French. It was established at Paul Bernardo's murder trial that, on May 6, 1993, at a time when the police did not have control of 57 Bayview Drive, a lawyer who was acting for Paul Bernardo at the time located the videotapes in the house and removed them. The police were not aware that he had done so. For more than 16 months after that date, the Crown and the police did not know where the videotapes were or even if they existed.

On May 14, 1993, Karla Homolka and the Crown entered into an agreement that she would plead guilty to two charges of manslaughter in the deaths of Leslie Mahaffy and Kristen French and that a joint recommendation would be made to the court that she be sentenced to 12 years imprisonment on each charge with the sentences to be served concurrently with each other. In return, she would co-operate with the authorities and testify against Paul Bernardo. Later in this report I will discuss that agreement in some detail. Karla Homolka gave extensive sworn statements to the police on that day and over the ensuing three days.

On May 18, 1993, formal charges of murder and associated offences were laid against Paul Bernardo. Karla Homolka was charged with manslaughter. She appeared in court, waived her right to a preliminary hearing, was committed for trial and was released on bail pending her trial. On July 6, 1993, she appeared in the Ontario Court of Justice (General Division) at St. Catharines for her trial. The court was presided over by Mr. Justice Francis Kovacs. She pleaded guilty to the charges. Mr. Justice Kovacs accepted the joint recommendation and sentenced her to a term of 12 years imprisonment on each charge to be served concurrently. She has been serving her sentence since then.

Two sets of charges were brought against Paul Bernardo. First, there were the murder and related charges involving Leslie Mahaffy and Kristen French. They were pending in St. Catharines

and their prosecution was being conducted by Raymond Houlahan, the Crown Attorney at St. Catharines, and his Assistant, Gregory Barnett. Second, there were the Scarborough rapes and all other sexual offences regardless of where committed which did not involve either Leslie Mahaffy or Kristen French. Those charges were pending in Scarborough and their prosecution was being conducted by Mary Hall, the Crown Attorney at Scarborough, and her Assistants, Thomas Atkinson, and Shawn Porter.

Because there were two sets of charges which arose in a number of different jurisdictions and which were pending in two different judicial districts, it was correctly anticipated that organizational problems and other difficulties would probably arise in the prosecution of the two cases. The Ministry of the Attorney General, therefore, in the summer of 1993, established a committee of senior Crown officials to provide direction and guidance to the two prosecution teams. That committee was informally referred to as the Management Committee. I will describe the composition of it later.

In the summer of 1993, Acting Inspector Anthony Warr of the Metro Police became the officer in charge of the investigation of the sexual assault charges. Later, when the Metro Police joined the Green Ribbon Task Force, he became the senior representative of the Metro Police on the joint task force.

During the fall of 1993 and the winter of 1994, the investigation relating both to the murders and to the sexual assault charges continued. Preparation was also being made for the preliminary hearing of the murder charges which was set to begin on April 4, 1994. In the meantime, the prosecutors applied to the Attorney General for a preferred indictment on the murder and related charges. The Honourable Marion Boyd granted the application and, on March 30, 1994, she preferred the indictment which eliminated the need for a preliminary hearing. The prosecutors also applied for a preferred indictment on the sexual assault charges. The Attorney General granted that application and, on May 2, 1994, she preferred an indictment on those charges.

On May 4, 1994, the trial of Paul Bernardo on murder and related charges began in the Ontario Court of Justice (General Division). The court was presided over by Associate Chief Justice Patrick LeSage. The trial started with Paul Bernardo's pleas of not guilty. Chief Justice LeSage, pursuant to Section 645(5) of the *Criminal Code*, then began hearing those matters which a trial judge is entitled to deal with before a jury is empanelled. The trial was adjourned from time to time through the spring and summer months as certain of those matters came before the court. It seems evident that Chief Justice LeSage was anxious for those matters to be completed so that the jury could be empanelled and the evidence begin to be heard. He encouraged the lawyers involved to be expeditious so that could be accomplished.

On September 12, 1994, the lawyers who, until then, had represented Paul Bernardo asked the Court to be removed as his counsel. Their request was granted. That development, however, caused a considerable delay because new defence counsel, John Rosen and Anthony Bryant, needed a substantial period of time to complete their prior commitments and to prepare for the very complex case which they were undertaking.

Ten days later, on September 22, 1994, a dramatic event occurred. The police were given the videotapes which had been removed from 57 Bayview Drive on May 6, 1993. It was necessary to do some preliminary work on the videotapes before the police could make a detailed review of them. On September 28, 1994, the preliminary work was completed and the police began their detailed review. One segment of the videotapes showed a conversation between Paul Bernardo and Karla Homolka which suggested that they might have committed other crimes, possibly including another murder. The police had to investigate those issues. They found that there were no other crimes which could be attributed to Paul Bernardo and Karla Homolka.

During the fall and winter, the place of the trial was moved from St. Catharines to Toronto and Paul Bernardo was remanded to a psychiatric facility for assessment on behalf of the defence. On February 6, 1995, Mary Hall resigned as counsel for the Crown in the sexual assault charges. She was eventually replaced by Leslie

Baldwin. A date was fixed for the selection of the jury and summonses were sent to prospective jurors to report for duty on May 1, 1995.

On May 1, 1995, the process of jury selection began. The trial continued through the spring and summer. On September 1, 1995, Paul Bernardo was found guilty of two charges of first degree murder and of all the charges associated with the abductions and murders of Leslie Mahaffy and Kristen French. On the murder convictions, he was sentenced to life imprisonment without eligibility for parole for 25 years. The Crown then launched a dangerous offender application against him pursuant to Part XXIV of the *Criminal Code*. That proceeding was completed on November 3, 1995 when Chief Justice LeSage found Paul Bernardo to be a dangerous offender and sentenced him to be detained in a penitentiary for an indefinite period of time.

With that summary of the facts, I will now turn to consider the terms of reference which have been directed to me.

TERM OF REFERENCE NO. 1

WHETHER THE PLEA ARRANGEMENT ENTERED INTO BY CROWN COUNSEL WITH KARLA HOMOLKA ON MAY 14, 1993, WAS APPROPRIATE IN ALL THE CIRCUMSTANCES.

The plea arrangement, which I will refer to as the "resolution agreement", took the form of an exchange of correspondence between Murray Segal, representing the Ministry of the Attorney General, and George Walker, representing Karla Homolka. That exchange of correspondence is an appendix to this report. The resolution agreement was the result of negotiations and discussions which took place over a three month period beginning on February 12, 1993. I will outline in some detail the course of the negotiations but, before doing so, I wish to sketch out as briefly as possible the organizational structure of the Ministry of the Attorney General within which the resolution agreement was reached.

The Ministry of the Attorney General is made up of a number of divisions. Each division is headed by an Assistant Deputy Attorney General who reports to the Deputy Attorney General who, in turn, reports to the Attorney General. In the spring of 1993, Marion Boyd was the Attorney General and George Thomson was the Deputy Attorney General. Michael Code was the Assistant Deputy Attorney General - Criminal and, as such, was the head of the Criminal Law Division. Before his appointment as Assistant Deputy Attorney

General, Michael Code had for many years been a prominent and respected member of the criminal defence bar. He had a wealth of experience as a practising criminal lawyer.

The Criminal Law Division is made up of approximately 500 lawyers, plus support staff. It includes all of the Crown Attorneys and Assistant Crown Attorneys in Ontario. For purposes of the administration of criminal justice, the province is divided into judicial regions. Each region has a Regional Director of Crown Attorneys who supervises the Crown Attorneys in that region. There is a Crown Attorney in each main urban centre in the province. At all times material to the Bernardo case, Raymond Houlahan was the Crown Attorney for the Regional Municipality of Niagara with his office in St. Catharines. Mary Hall was the Crown Attorney for Scarborough. Crown Attorneys and their Assistants are responsible for the conduct of virtually all criminal trials which fall within the province's sphere of constitutional responsibility.

Within the Criminal Law Division of the Ministry of the Attorney General there is a Crown Law Office - Criminal. The responsibilities of the Crown Law Office - Criminal include representing the Crown in the Court of Appeal for Ontario and in the Supreme Court of Canada. The Crown Law Office - Criminal is responsible, within the Criminal Law Division, for developing criminal law policy in Ontario. It conducts certain specialized prosecutions, generally related to large scale frauds, some

organized crime prosecutions and the prosecution of persons who are involved in the administration of justice, such as police officers, charged with serious offences. The Crown Law Office - Criminal provides specialized legal advice in criminal matters to the Assistant Deputy Attorney General - Criminal, the Deputy Attorney General and the Attorney General. It also provides specialized legal advice to Crown Attorneys and sometimes directly to police forces and other outside agencies. The Crown Law Office - Criminal often becomes involved where consideration is being given to the granting of complete or partial immunity to a potentially unsavoury witness. Many of the counsel in the Crown Law Office - Criminal are specialists in particular areas of criminal law arising from their experience doing appellate court work.

At all material times, Murray Segal was the Director of the Crown Law Office - Criminal. In 1993 he had been a lawyer for 16 years. He had spent his entire career in the Ministry of the Attorney General. He had started as a counsel and had risen to the office of Director through the ranks of Senior Counsel and Deputy Director. He had extensive experience both as a trial prosecutor and as counsel for the Crown in the Court of Appeal for Ontario and in the Supreme Court of Canada. He is the author and co-author of a substantial number of legal publications in the area of criminal law and he is an instructor in criminal law in the bar admission program administered by the Law Society of Upper Canada.

Shortly after Paul Bernardo was identified as the Scarborough rapist by the DNA results, and then became the prime suspect in the murders of Leslie Mahaffy and Kristen French, S. Casey Hill was assigned to assist the police in their application for warrants to search 57 Bayview Drive and Paul Bernardo's automobiles. At that time, Casey Hill was General Counsel to the Ministry of the Attorney General. He is now The Honourable Mr. Justice Hill. He was appointed a judge of the Ontario Court of Justice (General Division) on May 31, 1994. Casey Hill is a recognized expert in the law relating to search warrants. He became intimately acquainted with all of the evidence and information available to the police respecting Paul Bernardo and Karla Homolka. Casey Hill was assisted by Michal Fairburn. She was a relatively junior lawyer, having been called to the bar about two years previously.

As I noted in my factual outline, on February 11, 1993 Karla Homolka retained George Walker to represent her. George Walker is a prominent criminal defence lawyer who has practised in Niagara Falls for approximately 25 years. He has a well deserved reputation for being highly competent, ethical and responsible.

When Karla Homolka got in touch with George Walker, he thought she was coming to see him in respect to spousal abuse by her husband. When she came into his office, he noticed that she was extremely thin. He estimated her weight at 80 to 85 pounds. She still had racoon eyes, well over a month after she had initially

been hospitalized. She told him that there was much more to her visit than abuse by her husband. She disclosed in substantial detail her complicity in the death of her sister, Tammy, the confinement, sexual abuse and death of Leslie Mahaffy, and the abduction, confinement, sexual abuse and death of Kristen French. She also told him about admissions that her husband had made to her that he was the Scarborough rapist. She asked for his advice and for his legal assistance. He undertook to act for her.

The next day, George Walker met with Raymond Houlahan. He said that he had been consulted by Karla Homolka and that she had very important information about the Mahaffy and French murders. In return for that information, he asked for immunity for her complicity in those events. Raymond Houlahan knew that, if he became involved in discussions respecting immunity or resolution agreements, he could compromise his ability to act as the prosecutor when charges were laid. He, therefore, declined to discuss the matter but said that he would refer it to his Regional Director, James Treleaven, in Hamilton. When James Treleaven was apprised of the matter, he immediately communicated with Michael Code who assigned Murray Segal to deal with George Walker. On that day or the next, Murray Segal arranged to meet with George Walker at the latter's office in Niagara Falls on Sunday, February 14, 1993.

In the meantime, Murray Segal met with police officers and was briefed on the case. He learned, in a summary way, that the Leslie Mahaffy and Kristen French murder investigations had been ongoing for a long time and that there was no hard evidence against any suspect. It was clear that a serial rapist and murderer who preyed upon teenagers was on the loose. There was shock and fear in the communities where the dead young women lived which was heightened by the fact that they had probably been held captive for some time before they were killed. He concluded that the public safety was in jeopardy for as long as the person(s) responsible for those crimes remained at large.

At the meeting on February 14, 1993, Murray Segal was accompanied by Michal Fairburn. George Walker opened the meeting by disclosing that he had been retained by Karla Homolka and that she had information about certain offences in which she herself may be implicated. He said that he was seeking total immunity for his client in return for her cooperation. Murray Segal was not prepared to consider total immunity in this case, and would not have agreed to recommend it to the Attorney General. Nonetheless, each side agreed, on a without prejudice basis, that the information given to George Walker by Karla Homolka should be disclosed so that it could be assessed by the Crown and the police.

I should digress to say that, from the time of her first disclosures through her lawyer, Karla Homolka has fully described

her participation in the deaths of her sister, Leslie Mahaffy and Kristen French, and the surrounding events. While she contended from the first that she was, in effect, forced by Paul Bernardo to do what she did, she has never once attempted to deny her role or evade her complicity in those atrocities. From February 14, 1993 onwards, the Crown was fully aware of what she had done. She subsequently gave hundreds of hours of interviews to the police and Crown Attorneys. Inspector Bevan told me that he estimates it as high as 400 hours. Karla Homolka disclosed the fundamental facts to the Crown from the very beginning. Her subsequent interviews provided the Crown with substantial additional detail of the crimes. I have spent countless hours reading her many statements to the police, her recorded interviews and her evidence at trial. I am convinced that any suggestion that, at any time from February 14, 1993 onwards, she withheld any vital information about her critical role in those horrible crimes is simply unsustainable. I hold no brief for Karla Homolka. Nevertheless, fairness demands that it be recognized and accepted that from February 14, 1993 on, she completely and fully disclosed her complicity in the crimes which she and Paul Bernardo committed on those three young women.

George Walker disclosed his client's information about the murder of Kristen French. He said that Kristen French had been wearing a black brassiere and, under her skirt, a pair of basketball shorts bearing the name of a particular team. This information was not in the public domain. He said where and when

Kristen French had been abducted, which was information in the public domain. He disclosed that his client knew, when she and Paul Bernardo went out in his car that afternoon, that their purpose was to abduct a girl and take her to 57 Bayview Drive. He then described Karla Homolka's active and important role in the abduction. He said that his client had participated in the commission of sexual assaults on Kristen French. He said that Paul Bernardo had strangled Kristen French on the Sunday, and that her body had been disposed of immediately. He said that some of the sexual assaults had been videotaped. He also disclosed that his client had cut the victim's hair while she was still in the house. Finally, he said that his client had told him that the police were mistaken both about the type of car used in the abduction and the route which it had taken when it left the site of the abduction.

George Walker next disclosed his client's involvement with Leslie Mahaffy. Karla Homolka had not been involved in that abduction. She said that Paul Bernardo brought Leslie Mahaffy home blindfolded during the night. He wakened Karla Homolka and told her that he had abducted Leslie Mahaffy from her backyard. Paul Bernardo and Karla Homolka both engaged in sexual assaults upon Leslie Mahaffy. Some of these acts were recorded on videotape. Karla Homolka said that she gave Leslie Mahaffy a teddy bear and sleeping pills before Paul Bernardo killed her. The day following

Leslie Mahaffy's death, while Karla Homolka was at work, Paul Bernardo cut up the body and encased it in concrete. Karla Homolka helped dispose of the body parts.

George Walker also disclosed some of the essential details of the assault upon and death of Tammy Homolka, and his client's role in those events.

George Walker disclosed that Paul Bernardo had admitted to Karla Homolka that he was responsible for the Scarborough rapes and that he had committed many more rapes than those which the police had attributed to the Scarborough rapist. He said that Paul Bernardo had told Karla Homolka that he took trophies and identification from most of his victims. She said that Paul Bernardo had admitted raping a girl in the early morning of April 6, 1991 in St. Catharines. She saw the jacket which Paul Bernardo had taken from the victim. The jacket was eventually burned in the fireplace.

Finally, George Walker told the Crown that Karla Homolka had looked for the incriminating videotapes before she finally left 57 Bayview Drive with her mother and sister to go to the hospital. She searched in the place where she believed they were hidden but was unable to find them. She thought that they were kept in the same hiding place as the knife that Paul Bernardo used to

intimidate his victims. The knife was in its hiding place but not the videotapes.

Following those disclosures, the lawyers discussed a number of matters. George Walker was asked to obtain certain additional information so that the Crown and the police could be sure that the information being given to them was genuine and reliable. George Walker also wanted some information from the Crown and the police to satisfy himself that his client was not fabricating what she had told him. It was agreed that further discussions would take place.

Immediately following that meeting, Murray Segal met with Inspector Bevan and other police officers. He briefed them on his discussions with George Walker and on the disclosures which had been made to him. He told them that George Walker had asked for total immunity for Karla Homolka but that he had rejected that request. The police gave him further information which they had developed in the course of their investigation of the murders. The consensus reached at the meeting was that Karla Homolka had in fact been involved in the murders and that she did have information which would be invaluable to their investigation. There were subsequent telephone discussions between George Walker and Murray Segal which led both of them to the conclusion that Karla Homolka was someone who had to be taken seriously.

They then rather tentatively and very carefully began to sound each other out. Each of these men was a very experienced and skilled lawyer. They embarked upon delicate negotiations. Neither of them would sell their side short. At the time, the police had no legally admissible evidence against either Paul Bernardo or Karla Homolka in respect of the deaths of Leslie Mahaffy or Kristen French but they were convinced that Karla Homolka had evidence which could establish a case against both of them. The Crown knew that Karla Homolka was under no legal obligation to assist the police in an investigation into crimes in which she was implicated. The Crown and the police understood from her counsel that she was prepared to provide assistance if it was to her advantage to do so.

George Walker knew that if the police investigation succeeded in obtaining evidence against her, Karla Homolka would face murder charges, most likely, first degree murder charges. He knew from Karla Homolka that videotapes had been made which were very compromising of her and Paul Bernardo. Karla Homolka was convinced, knowing Paul Bernardo's nature, that he would never destroy those videotapes. His client was in jeopardy which, while it could not be eliminated, could likely be reduced by having her co-operate with the police. The police were convinced that such videotapes existed but, in the early days of the search, they had not found them.

While counsel were negotiating with great care and delicacy, I think I should put the situation bluntly. On the one hand, Karla Homolka had something to sell which the police needed desperately: her co-operation. On the other hand, she knew that she was in a precarious situation and she was not in a position to hold out for too high a price. The problem facing Murray Segal and George Walker in the latter part of February, 1993 was to find a resolution which would ensure her co-operation and which would satisfy a court that such a resolution was in the public interest.

There was another issue of pressing concern. The police knew from the information generated by the Scarborough rapes investigation, the opinion given by Special Agent McCrary, and the information disclosed by Karla Homolka, that Paul Bernardo was a highly dangerous man. This was recognized by Murray Segal. I can add that I have spent over 40 years of my working life in and around all levels of the criminal courts of this province and I have never encountered anyone who remotely equals the level of danger that Paul Bernardo represented to the community. Even though he was in custody and by late February, 1993 the evidence in some of the Scarborough rape cases was becoming very strong, I am nevertheless of the view that the interests of justice urgently demanded that he be prosecuted for the murders which by then he was known to have committed.

Murray Segal and George Walker were not breaking new ground by seeking a resolution that would involve Karla Homolka offering co-operation and testimony in exchange for some form of lenient treatment with respect to the crimes which she had committed. The practice of using accomplices to give evidence for the prosecution is well established and is legally acceptable. In the United States, the practice is known as calling an accomplice to give "State's evidence". In the United Kingdom, it is known as having an accomplice "turn Queen's evidence". In Canada, the practice is less elegantly described in the vernacular as having the accomplice "roll over".

Those who work in the criminal justice system are familiar with this practice. Police officers, Crown Attorneys, defence counsel, and judges see it done almost daily. Many members of the public are aware of this practice. Those who work in the criminal justice system, and members of the public, recognize that, however distasteful, arrangements with accomplices form a necessary part of the prosecution of some criminal cases. The law has long recognized the existence of, and the need for, such arrangements. For example, the practice of offering immunity from prosecution or leniency was the subject of comment by the English Court of Appeal in the case of *R. v. Brian James Turner and Others* (1975), 61 Cr. App. R. 67. Speaking for the Court, Lord Justice Lawton said (at pages 79 - 80):

...it is in the interests of the public that criminals should be brought to justice; and the more serious the crimes, the greater is the need for justice to be done. Employing Queen's evidence to accomplish this end is distasteful and has been distasteful for at least three hundred years to Judges, lawyers and members of the public...Undertakings of immunity from prosecution may have to be given in the public interest...The Director (the Director of Public Prosecutions) should give them most sparingly; and in cases involving grave crimes it would be prudent of him to consult the Law Officers before making any promises. In saying what we have, we should not be taken as doubting the well established practice of calling accomplices on behalf of the Crown who have been charged in the same indictment as the accused and who have pleaded guilty.

The practice was recently discussed again in a judgment of the Privy Council in the case of *Chan Wai-Keung v. The Queen*, [1995] 2 Cr. App. R. 194. In delivering the judgment of the Board, Lord Mustill said the following:

It has been recognised for centuries that the practice of allowing one co-defendant to "turn Queen's evidence" and obtain an immunity from further process by giving evidence against another was a powerful weapon for bringing criminals to justice, and although this practice "has been distasteful for at least 300 years to judges, lawyers and members of the public", and although it brings with it an obvious risk that the defendant will give false evidence under this "most powerful inducement", the same very experienced court which so

stigmatised this practice was willing to accept that it was in accordance with the law: *Turner (Bryan)* (1975), 61 Cr. App. R. 67, 79.

The logic of this practice, which places the interests of the public in the detection and punishment of crime above the risk which must always exist where a witness gives evidence for the prosecution in the hope that he will obtain a benefit thereby, must also apply to situations where the "powerful inducement" takes the shape not of a promised immunity from prosecution, but of the expectation that he will be granted the "discount" from sentence which the courts accord to those who, not infrequently at physical risk, give evidence against their co-defendants. This logic is carried into effect. No authority is needed to illustrate the widespread practice of calling as a witness for the prosecution a co-defendant who has pleaded guilty.

Although "no authority is needed to illustrate the widespread practice", I will refer to one fairly recent Ontario case which illustrates how the practice was employed in another high-profile first degree murder prosecution. The case to which I will refer is the prosecution of Helmuth Buxbaum for the contract murder of his wife.

Although the basic facts in the *Buxbaum* case may still be remembered by many who followed the trial through media reports, I will briefly review them. On July 5, 1984, Hanna Buxbaum was shot to death at the side of Highway 402 near London, Ontario. Her husband had hired one Barrett to arrange for someone to kill her.

Barrett hired one Allen to carry out the contract killing. Allen eventually hired one Foshay to act as the "trigger man". Foshay got one Armes to go to the scene of the killing with him. Helmuth Buxbaum drove his wife to the pre-arranged site and the plan was put into action. Foshay shot Hanna Buxbaum to death and then Foshay and Armes fled the scene.

Initially, seven people were charged with first degree murder, including Helmuth Buxbaum, Foshay, Barrett, Armes, Allen and one Hicks. They all played different parts in arranging and carrying out the murder. At the time of the preliminary hearing, the Crown recognized that its case against the seven accused was far from overwhelming. The Crown concluded that, while a case of first degree murder might be made out against most of the accused, the primary objective of the prosecution should be to ensure that the parties most responsible for the murder were convicted and appropriately sentenced.

The Crown identified the prime offenders as Helmuth Buxbaum, the person who contracted for the killing of his wife and stood to gain the most from her death, and Foshay, the trigger man. It recognized that there were weaknesses in the case against these two men and decided to strengthen its case against them by obtaining the evidence of other participants in the crime. The best evidence against Helmuth Buxbaum and Foshay would be evidence from some of the other accused. The only way to obtain their evidence was to

offer pleas to reduced charges with a "discount" on sentence. That is exactly what was done. In the result, pleas of guilty to reduced charges were accepted from Armes, Barrett, Allen and Hicks and they received discounted sentences.

Barrett, Allen and Armes testified for the Crown on Helmuth Buxbaum's trial for first degree murder. Largely because of the evidence of these accomplices, Helmuth Buxbaum was convicted of first degree murder and sentenced to life imprisonment without eligibility for parole for twenty-five years.

The Honourable Mr. Justice John O'Driscoll presided at the trial of Helmuth Buxbaum. In his instructions to the jury, he commented upon the practice of making deals with accomplices:

I don't know, maybe you disagree with so-called "plea bargaining", maybe you disagree with total immunity, maybe you disagree with partial immunity, maybe you disagree with what may be termed "selective prosecutions".

We do not live in a Utopia. Crown counsel are forced to be pragmatists. You may recall what happened in the United States in the 1970s during the Watergate Prosecutions, some individuals were given total or partial immunity from prosecution in return for testifying as prosecution witnesses. The same thing happened in this Province in the so-called "Dredging" case that took place in 1978 and 1979. The so-called "plea bargain", the so-called "deal", happens thousands

of times a day in Canada. The Crown or the prosecution makes a decision to not lay a charge against "A" in return for "A" testifying as a Crown witness at "B"s' trial, or the Crown makes a decision to take a plea of guilty from "A" on a charge lesser than the one originally laid in return for "A" testifying as a Crown witness at "B"s' trial.

Those comments represent the current state of the law.

Foshay was tried separately from Helmuth Buxbaum. Armes, Barrett, Allen and Hicks all testified for the Crown. Without their testimony, the prosecution's case against Foshay was not a strong one. Ultimately, the jury convicted him of second degree murder only. He was sentenced to life imprisonment without eligibility for parole for fifteen years. By coincidence, I was the trial judge in the Foshay case. During the sentencing proceedings, I commented upon the practice of the Crown making resolution agreements with accomplices:

The jury, in the application of what seems to me to be a very practical sense of justice, refused to find Foshay guilty of first degree murder when Armes was convicted of second degree murder only.

In my opinion the Crown and the police cannot be faulted for accepting the plea in the Armes case, nor indeed for accepting the pleas in the cases of Barrett and Allen and Hicks. Without those witnesses, it may well have been that the cases against Foshay and Buxbaum himself might not have been sufficiently strong to obtain

convictions against them. As it turned out there were convictions for first degree murder against Buxbaum and second degree murder against the two men at the scene.

Perhaps that is not a perfect result, from the point of view of the Crown, but it was certainly better than running the serious risk that three scoundrels might escape justice entirely. For what it is worth, I commend the Crown and the police authorities for taking a difficult, and what may have been a distasteful, decision.

In an ideal world, there would be perfect justice: all offenders would be brought to trial, they would be convicted of all offences which they had actually committed, and they would receive sentences fully reflective of the seriousness of their crimes. In the real world, however, some compromises have to be made. It is sometimes necessary to allow an accomplice to plead guilty to a reduced charge, and receive a reduced sentence, in order to ensure that the full measure of justice is meted out to the principal offender.

Before continuing a review of the circumstances leading to the resolution agreement, something should be said about the process of negotiating with an accomplice. Negotiating with an accomplice to obtain his or her evidence against another perpetrator is always a very distasteful business. No one likes to do it. Unfortunately, it is a necessary and not infrequent part of the investigation and prosecution of crime. The events which follow must be reviewed

with an appreciation that, as distasteful as the negotiations were, they were in accordance with the law.

On February 22, 1993, Murray Segal met with Raymond Houlahan, Casey Hill, James Treleaven, Deputy Chief Parkhouse and Inspector Bevan to discuss a myriad of issues involving the investigation of the murders. One of the matters considered was whether discussions ought to be pursued to obtain the co-operation of Karla Homolka in the investigation. Both the Crown and the police agreed that the dialogue with George Walker should remain open. Everyone at the meeting believed that it was in the public interest to pursue that direction in order to bring to justice all persons who may have been involved in the murders.

The next day, February 23, 1993, Murray Segal and George Walker had a lengthy meeting at the court house in St. Catharines. At that time, the police did not have any admissible evidence against either Karla Homolka or Paul Bernardo which implicated them in the murders. The search of 57 Bayview Drive was well under way but had produced no hard evidence. George Walker said that there were hospital records which supported Karla Homolka's claims that she had been severely beaten by Paul Bernardo. Murray Segal replied that, in his view, the abuse was not a complete explanation for her conduct. They directed their attention to the possibility of Karla Homolka giving an "induced statement" to the police. George Walker hesitated to agree at that time.

Because an "induced statement" did eventually become part of the resolution agreement, a word of explanation is appropriate. The law is well settled that a statement given by an accused person to someone in authority is only admissible in evidence if the statement was made voluntarily. A statement which a person is induced to make by the hope of advantage held out by a person in authority is not considered to be a voluntary statement and, therefore, cannot be admitted into evidence against the person who made it. The expression "cautioned statement" is also used in the resolution agreement. By contrast with an induced statement, a cautioned statement is one taken after the person making it is advised and understands that he or she is under no obligation to make the statement and need not do so. Such a statement is often found to be voluntary and admissible against the person who made it.

Telephone conversations between Murray Segal and George Walker ensued over the next two days. The police were concerned that Karla Homolka, who was under surveillance but not in detention, might leave for the United States. Such an event could cause the police serious problems. George Walker agreed to certain arrangements on behalf of Karla Homolka to satisfy the police that his client could not easily skip the country. Murray Segal told him that the investigators were anxious to resolve the matters involving Karla Homolka.

Their next meeting was on February 25, 1993 in Niagara Falls. Murray Segal showed George Walker a photograph which had been made of a frame of a short videotape which had been found three days earlier at 57 Bayview Drive. This short videotape depicted a sexual act being performed by Karla Homolka on a prostrate female whom the authorities suspected was Kristen French. Much later it was learned that the person was not Kristen French but was, in fact, Jane Doe. The photograph was of very poor quality and was of one frame only. It was shown to George Walker to demonstrate that the police had obtained some evidence which might connect Karla Homolka to Kristen French.

At that meeting, Murray Segal suggested that so long as there was no evidence that Karla Homolka had actually participated in the killings and that she gave truthful statements to the police, the Crown would accept pleas of guilty to lesser charges and would accept the reduced sentences which would follow convictions on such charges. He said that it was essential that Karla Homolka disclose all of her knowledge of the offences and the full extent of her participation in them. She would also have to agree to testify against Paul Bernardo at his trial. A possible sentence of ten years was mentioned. After the meeting, Murray Segal made a rough draft of his concept of a resolution agreement.

Their next meeting also took place in Niagara Falls. It was on March 2, 1993. Between the two meetings, the lawyers had spoken

a number of times by telephone. The substance of the calls was that there was a real prospect that Karla Homolka would give the induced statement and co-operate with the authorities if the sentence was a total of ten years on two counts of manslaughter. By that time, however, George Walker was concerned about the advisability of Karla Homolka entering into any resolution agreement until she had been assessed by a psychiatrist. At the meeting, George Walker confirmed that a psychiatric assessment of his client was essential before any further negotiations could take place. Murray Segal respected George Walker's professional judgment, but advised him that the police investigation would continue and the police would be free to pursue such charges as their investigation justified. It was expected that the assessment would only take a week or two. It was understood, however, that there were no guarantees that the resolution which had been discussed earlier would be available if and when negotiations resumed. Murray Segal and George Walker agreed that all resolution discussions would be terminated, but that they would keep their lines of communication open.

On March 5, 1993, Karla Homolka was admitted to the Northwestern General Hospital in Toronto under the care of Dr. Hans Arndt. George Walker undertook to advise the Crown in advance of her discharge so that the police could resume their surveillance of her. The hospitalization turned out to be much longer than anyone had anticipated. She was not discharged until April 23, 1993.

After the negotiations were suspended, the Crown's case against Karla Homolka gained considerable strength as a result of the continuing police investigation. On March 3, 1993, the police interviewed two of her co-workers, Wendy Lutczyn and Patti Weir. They learned that on February 26, 1993, Karla Homolka had come to visit them at the animal clinic. She had been drinking heavily and wanted to talk to them. She told them that she was liable to be charged with murder, but that her lawyer was negotiating so that she would be charged with lesser offences in return for her co-operation with the police. She told them that she might be sentenced to ten years in prison. The testimony of those witnesses would be admissible against Karla Homolka and could amount to some evidence of an admission by her of her complicity in the murders.

On April 1, 1993, the police interviewed Karla Homolka's aunt and uncle, Patricia and Calvin Seger. They learned from the Segers that, after the police left their home on February 9, 1993, Karla Homolka disclosed her complicity in the offences committed against Leslie Mahaffy and Kristen French and the part which she and Paul Bernardo had played in them. While their testimony of what they were told by Karla Homolka would not be admissible against Paul Bernardo, it would be admissible against Karla Homolka and would be more than sufficient to found a strong case in law against her for murder in respect to both Leslie Mahaffy and Kristen French.

Unfortunately, by the end of April, the case against Paul Bernardo for murder had not advanced at all. Evidence had continued to accumulate in the Scarborough rape cases, and more DNA matches implicating Paul Bernardo had been established. The Crown hoped that some of the articles taken from 57 Bayview Drive, when scientifically tested, would provide some evidence. None of that evidence was by then available. The videotapes had not been found. The search warrants expired on April 30, 1993 and all of the inquiries and investigations had not led the police a step closer to Paul Bernardo. The only way to him was through Karla Homolka. The Crown and the police then faced a serious dilemma. They had a strong case against her but charging her with murder would most certainly eliminate her as their means of establishing murder and other charges relating to Leslie Mahaffy and Kristen French against Paul Bernardo. The authorities were faced with the unpleasant fact that if Paul Bernardo was to be prosecuted for those offences, it was essential that they have Karla Homolka's evidence and co-operation.

During her stay in hospital, Karla Homolka was under the care of Dr. Hans Arndt who is a psychiatrist. He had her seen in consultation by Dr. Andrew Malcolm who is a psychiatrist with extensive forensic experience. Dr. Arndt also had her seen by a clinical psychologist, Dr. Alan Long, who administered psychological tests. These three doctors were unanimous in their diagnosis. At the time of her hospitalization, Karla Homolka was

suffering from dysthymia, also known as reactive depression, and a serious post traumatic stress disorder as defined in the American Psychiatric Association's Diagnostic Manual, D.S.M. III-R.

Near the end of his report, Dr, Arndt made the following observation:

Indeed Karla's experience since her age 17, could be to some degree, compared to the experiences of concentration camp survivors who as well experienced horrendous tragedies and had to go through and perform actions in order to survive that under normal circumstances they would clearly have stayed away from, but in the interest of self-preservation or in the interest of preserving other people's lives, did see themselves helpless and went through the actions as had been required of them.

I think it is also appropriate to quote extensively from the report of Dr. Malcolm:

Diagnosis

Karla shows no sign of any psychotic disorder.

There are, I realize, indications of some residual organic brain disorder; but these are minimal and they should not interfere with her rehabilitation.

I could not detect the signs of any personality disorder. She does not show the instability, impulsiveness, and inappropriateness of the person with Borderline Personality Disorder. There is certainly a

crisis in self-image at the moment but this, it seems to me, is a reaction to her total defeat as a citizen, a wife, and a family member. She does not satisfy the criteria for the diagnosis of the Antisocial Personality Disorder.

She is anxious and depressed but both of these states make sense in terms of her recent history and her present situation. Thus there is a dysthymia 300.40. This is a disorder in which there is a chronically depressed mood as a response to certain disagreeable life situations. I was able to ascertain that Karla has suffered from sleep disturbances, a low energy level, low self esteem, a diminished ability to make difficult decisions, and a marked feeling of hopelessness. This is dysthymia, a condition that can definitely be helped by psychotherapy.

In addition there are all of the factors that constitute psychological torture as defined by Amnesty International. There was social isolation, exhaustion stemming from deprivation of sleep, monopolization of perception through the exhibition of intensely possessive behaviour, threats of death against the person or the person's relatives, humiliation and denial of power, and the administration of drugs or alcohol to diminish self control. Karla was systematically subjected to all of these things.

Furthermore it is extremely interesting that these same variables are found in virtually every case of wife abuse. The most pervasive emotional consequence of battering is the development of a condition known as "learned helplessness". This is a term that is used in biology to describe the response of an organism repeatedly and unpredictably subjected to painful stimulæ. The most commonly observed response to such

treatment includes feelings of powerlessness, passivity, a diminished capacity for problem solving and a general unwillingness to try to avoid painful stimulæ. As is now well known women who have been subjected to constant battering commonly show all of these tendencies until they suddenly come to realize that with the next battering death will ensue. At such a point they will expose themselves to great danger by running away or by striking out at the person who is battering them. Karla went through all of this but in the end, in early January 1993, she escaped to a hospital and for the first time revealed the history of the physical and psychological abuse to which she had been subjected.

Now there also are, in this case, many indications of the Post Traumatic Stress Disorder. In this disorder certain symptoms develop following a psychologically distressing event that is outside the usual range of human experience. The experience in question would be no ordinary one. It would be a stressor that would induce terror and helplessness. Thus there is often a serious threat to one's own life or physical integrity. There may be a threat to the safety of one's relatives. There may be the experience of witnessing the injury or death of another person. There is no doubt at all that what Karla was forced to experience constituted a major stressor and that this stressor was composed of numerous reinforcing events. All of this warrants the making of the diagnosis Post Traumatic Stress Disorder 309.89.

Recovery from such an intense experience does not occur suddenly. It takes many years...

Karla was subjected to repeated sadistic sexual attacks. She was humiliated, beaten, tied up and raped over a period of years. She was manipulated into being a participant in what eventuated in the death of a much

loved sister. She was advised on her wedding night that her new husband was a rapist. She was told that if she ever tried to leave her husband he would track her down and kill her. Or else he would kill her remaining sister and her parents. She was living with a sexual sadist and she was convinced that from this bewildering fate there was no escape.

I think, as well, I should include part of the report prepared by Dr. Long:

Personality testing indicates a very depressed and emotionally withdrawn person suffering severe remorse for her participation in the illegal acts referred to. Furthermore, this woman suffers from and requires treatment for the effects of extremely severe prolonged exposure to her husband's sadistic acts and the ominous atmosphere he created. The latter culminating in a deep belief that she too would someday become the victim of his murderous behaviour. Her submissiveness results from deep psychological conflicts with hostile wishes which she had learned early in life to counter through the adoption of submissive and rather passive behaviour and coping techniques. This is not to indicate that she would give form to these aggressive impulses through aggressive behaviour. Neither was there evidence of masochistic tendencies in terms of finding pleasure by being hurt herself nor her observing the suffering of others. It is believed that she was sufficiently hoodwinked and intimidated by Paul Bernardo that she found herself in a compromising position as a result of a sequence of experiences with him that escalated in the intensity of their deviousness and severity. This

reached a climax with the death of her sister and, from that point on, she believed that she was trapped in the same manner that an abused wife considers herself to be trapped and then having to fend for her life.

It is not intended to excuse her morally for the part she played in the illegal acts they carried out: she was technically of sound mind and free of disease of the mind of sufficient severity to cloud her awareness or cause her to be unable to appreciate the nature and quality of her acts. Indeed, she was a victim herself and is in serious need of continued psychiatric care. Treatment is essential for Dysthymia and for a Post-Traumatic Stress Syndrome which is chronic and severe.

While their diagnoses were not available in 1993, I should note that subsequently two other psychiatrists and two other psychologists all diagnosed Karla Homolka as suffering from post traumatic stress disorder. Three of them said the disorder resulted from spousal abuse. I will make more detailed reference to that evidence later in this report. While the Crown's case against Karla Homolka was strengthened during her hospitalization, some insight was provided into her mental state at the time she participated in these crimes.

Sometime between Karla Homolka's discharge from the hospital on April 23, 1993 and the end of that month, Murray Segal and George Walker had a telephone conversation in which the subject of a resolution agreement was re-opened. George Walker expressed the view that, in the light of the psychiatric information to which I

have just made reference, a sentence in the range of eight to ten years would be appropriate. Because of the increased strength of the Crown's case against Karla Homolka, Murray Segal said that he thought that any sentence should be in excess of ten years. They agreed to meet in Toronto on April 30, 1993.

During their many meetings and conversations between February 14, 1993 and the day before the resolution agreement was confirmed in writing, George Walker had obtained from Karla Homolka and provided to Murray Segal more details about her participation and Paul Bernardo's participation in the murders. The initial disclosure about the death of Tammy Homolka had been sparse. Over the period in question, George Walker told Murray Segal that Karla Homolka had disclosed to him the following details of her sister's death:

- (i) Paul Bernardo had expressed to his wife an interest in having sex with Tammy;
- (ii) at some point in the summer before her death, Tammy left a party with Paul Bernardo and was absent for a long time; Karla Homolka became upset and the couple had a significant argument over the issue;

- (iii) as a result of pressure, Karla Homolka agreed to appease Paul Bernardo by assisting in drugging Tammy;
- (iv) Karla Homolka obtained sleeping pills from a drugstore and an anaesthetic from her place of work;
- (v) Paul Bernardo and Karla Homolka participated in the drugging which involved pills and liquor;
- (vi) Karla Homolka administered the anaesthetic once Tammy was unconscious by applying a cloth over her face;
- (vii) Karla Homolka monitored Tammy's pulse and her breathing while she was unconscious;
- (viii) Paul Bernardo and Karla Homolka participated individually in sex with Tammy;
- (ix) Karla Homolka was repulsed by what Paul Bernardo asked her to do with Tammy;
- (x) Paul Bernardo and Karla Homolka took turns videotaping their activities with Tammy;

- (xi) Paul Bernardo may not have ejaculated;
- (xii) Karla Homolka's parents and sister Lori were sleeping upstairs;
- (xiii) Paul Bernardo attempted to resuscitate Tammy; and
- (xiv) Paul Bernardo and Karla Homolka hid the videotape and lied to the police and ambulance attendants about the circumstances of Tammy's death.

In advance of the April 30, 1993 meeting with George Walker, Murray Segal attended a meeting in Toronto with Raymond Houlahan, Casey Hill, Michal Fairburn, Inspector Bevan and four other members of the Niagara Police. Inspector Bevan had prepared a "Mini-Brief" which was almost four inches thick. As thick as the Mini-Brief was, however, it did not contain enough evidence even to lay charges against Paul Bernardo with respect to the offences committed on Leslie Mahaffy and Kristen French. The Mini-Brief did contain sufficient evidence against Karla Homolka to sustain a reasonable prospect of successfully making out murder charges and other charges against her with respect to them.

At the meeting, the state of the evidence against Paul Bernardo was considered and those attending discussed what options were open to them. It was recognized that if murder charges were

laid against Karla Homolka, she would almost certainly decline to divulge any further information or give any co-operation to the authorities. There then would be no reasonable prospect of developing sufficient grounds to lay charges against Paul Bernardo. It was thought highly likely that George Walker would be prepared to recommend to his client that she plead guilty to charges of manslaughter. It was understood that she would not plead guilty to any murder charges, even to second degree murder.

An extended discussion then ensued about what would be an appropriate sentence. While the ultimate decision would be that of Murray Segal, he sought the input of the others. When a sentence of less than ten years was mentioned, Murray Segal said that he would not consider anything less than ten years. Casey Hill expressed the view that ten years was probably too low, but that a sentence in the range of twelve to fifteen years would satisfy the interests of justice. The meeting ended with a consensus, to which everyone agreed that, distasteful as it was, necessity required that a resolution agreement be obtained with Karla Homolka as soon as possible so that her co-operation and testimony against Paul Bernardo could be secured.

Murray Segal then met with George Walker. They had a lengthy discussion about the case. Each of them advanced to the other the strengths and weaknesses of their respective positions. The matter was not resolved, but they agreed to keep working on it. Over the

next few days, they had several telephone discussions and agreed to meet again in Niagara Falls. By this time, Murray Segal had reached the conclusion that a twelve year sentence would be in the public interest. That sentence would enable prosecutions for murder to be launched against the person whom he believed was the principal offender yet impose a substantial jail sentence upon the accomplice. After the meeting on April 30, 1993, Inspector Bevan got in touch with the Mahaffy and French families and arranged to meet with them on May 5, 1993.

On May 5, 1993, the lawyers met for several hours at George Walker's office in Niagara Falls. Murray Segal advised that, on his review of the evidence, Karla Homolka was liable for first degree murder in relation to the French homicide and second degree murder in relation to the Mahaffy homicide and that the evidence also substantiated charges of abduction, aggravated sexual assault, confinement and offering an indignity to a human body. He said that, unless a resolution agreement was agreed upon, the Crown intended to jointly charge Karla Homolka and Paul Bernardo with all offences. He said that sooner, rather than later, the negotiations would have to end. He gave George Walker a week to discuss a resolution agreement with Karla Homolka and advised him that, unless he heard from him by Wednesday, May 12, 1993, at 10 a.m., Karla Homolka would be arrested, taken into custody and formally charged with all of the offences. He said that he was prepared to agree to a resolution agreement which would involve pleas of guilty

to two counts of manslaughter and a joint submission that the total sentence be one of twelve years comprised of two terms of twelve years to be served concurrently with each other. The meeting ended with the lawyers having reached an agreement in principle. It was subject, however, to George Walker discussing it with Karla Homolka and her parents.

Murray Segal said that if the resolution agreement were entered into, he would insist that the circumstances surrounding Tammy Homolka's death be put before the trial judge as an aggravating circumstance pursuant to the decisions of the Court of Appeal for Ontario in *R. v. Garcia and Silva*, [1970] 3 C.C.C. 124 and *R. v. Robinson* (1979), 49 C.C.C. (2d) 464. Those cases stand for the proposition that offences with which the accused has not been charged can be put before the court as aggravating circumstances but, when that is done, the accused cannot subsequently be prosecuted for those offences.

After the meeting with George Walker concluded, Murray Segal met with Deborah Mahaffy and Donna and Douglas French. He and Inspector Bevan explained to them that there was a proposal to resolve the case against Karla Homolka in order to be able to prosecute Paul Bernardo for the murder of their daughters. They were very upset that the case against Karla Homolka would be resolved with convictions for manslaughter and sentences of no more than twelve years. It was explained to them that the crucial

videotapes had not been found and, at that time, without Karla Homolka's co-operation, there was really no case against Paul Bernardo. They understood the difficulty of the Crown's position and reluctantly acceded to it. The view of the French family was expressed by Donna French when Mr. Justice Campbell and I and our counsel met with the French family:

We felt that the police and the Crowns hated the plea bargain as much as we did. They only did it because they had no alternative.

When we met with Deborah and Dan Mahaffy, Dan Mahaffy told us:

We were disappointed, extremely disappointed that Karla Homolka only got twelve years. But at the time we felt it was the lesser of two evils.

Shortly after the meeting on May 5, 1993, George Walker met with Karla Homolka and her parents. He then advised Murray Segal that he and his client agreed in principle with the proposed resolution agreement. Murray Segal had previously prepared and given to George Walker drafts of the form of the resolution agreement which he proposed be entered into. He revised this draft on May 12, 1993 and gave it to George Walker, who agreed with the substance of it, but pointed out a minor technical error.

Murray Segal made the suggested technical correction. On May 13, 1993, he and George Walker met in Toronto and agreed to the corrected form. The resolution agreement was contained in a letter from Murray Segal to George Walker dated May 14, 1993. By a letter of the same date, George Walker, on behalf of Karla Homolka, accepted the resolution agreement.

Before going on to discuss the terms of the resolution agreement, I want to mention two matters about which, as a result of personal interviews, I am completely satisfied. The first matter is that, if the videotapes had been in the hands of the authorities on or before May 14, 1993, the Crown would never have entered into the resolution agreement with Karla Homolka. While I anticipated the answer, I nevertheless specifically asked Murray Segal if he would have agreed to this resolution if the videotapes had been available. He replied "Absolutely not!". He is an honest man whom I believe without reservation. Moreover, everyone involved in the process disliked the deal and disliked the result. They have confirmed to me that Murray Segal would not have made the agreement if the circumstances had not demanded that he do so. All of the persons who were involved told me that if the videotapes had been available at that time, Karla Homolka would have found herself in the prisoner's box beside Paul Bernardo.

The second matter upon which I have been completely satisfied is that Murray Segal kept his superiors fully informed of what he

was doing and why he was doing it and that they accepted his decision. I have spoken with Michael Code, Assistant Deputy Attorney General - Criminal, who confirmed to me that he was advised of the developments in the case, the details of the resolution negotiations, the need for them and the result. He shared the common distaste but felt that the Crown had no choice. He kept George Thomson, the Deputy Attorney General, apprised of developments and sometimes directly informed Marion Boyd, the Attorney General, of developments in the case. George Thomson told me that Murray Segal kept him current about how the case was developing and he had complete confidence in Murray Segal and his handling of the matter. He said that there had been consultation within the Ministry about the appropriateness of a twelve year sentence and that, in the circumstances, it was proper to agree to it. He kept the Attorney General advised and said that Murray Segal and Michael Code also had direct access to her in respect of this case. Marion Boyd told me that she was kept fully briefed on the case. She had great confidence in Murray Segal, Michael Code and George Thomson. She accepted the considered opinion and advice of her legal advisers.

I return now to the resolution agreement itself. A copy of the exchange of correspondence is an appendix to this report. It contemplates a number of matters and a number of steps. I will outline and explain as briefly as possible its main features under the headings used in the agreement.

(A) Induced Statement

This was the first step. Karla Homolka was obliged to give a statement to the police. It was agreed that this statement would be treated as having been induced by persons in authority. That meant that it could not be used as evidence against her. The purpose of this statement was to allow the police to question her in order to assess her reliability and credibility. The statement was to be a full, complete and truthful account of her participation in and/or knowledge of the deaths of Leslie Mahaffy, Kristen French and Tammy Homolka, the Scarborough rapes, the Henley Island rape and any other criminal activity. At the completion of this step, if the police were satisfied, the parties would proceed to the next step. If they were not satisfied, the resolution agreement would be terminated and charges against Karla Homolka would be proceeded with in the ordinary way.

(B) Cautioned Statement(s)

The next step was the taking of cautioned statements which could be used as evidence against Karla Homolka at trial. They were required to be full and complete.

(C) Other Assistance

This provision required Karla Homolka to provide ongoing assistance to the police in their efforts to find further evidence.

(D) Charge, Plea and Sentencing

It was agreed that after the police received the cautioned statements, Karla Homolka would be charged with two counts of manslaughter. At her trial, the Crown would read in the facts of such other crimes as the Crown deemed appropriate, and the sentence would take those other crimes into account. A joint submission for a total sentence of twelve years would be made to the court, *which was subject to acceptance by the trial judge.*

I have emphasized the fact that it was part of the resolution agreement that the sentence agreed upon by the Crown and Karla Homolka would ultimately be subject to the approval of the trial judge. This was in conformity with the law. The law is clear that a sentence is not imposed by the Crown. A sentence can only be imposed by the court. In our system of justice, the ultimate responsibility rests with the trial judge to decide what is a fit sentence in a particular case. It is now well recognized that a trial judge should give great weight to a joint recommendation made to the court on behalf of the Crown and the accused. That does not

remove from the trial judge, however, the ultimate responsibility of deciding whether or not a proposed sentence is a fit one.

The recent *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions* (usually called the "Martin Report" after the name of its Chair, The Honourable G. Arthur Martin, Q.C.) extensively considered the difficult issues of resolution discussions, often called plea bargaining, and summed up the role of the trial judge in that process as follows (at page 329):

...the sentencing judge remains the ultimate arbiter of the propriety of the sentence, and that the sentence is demonstrated to be fit in the circumstances.

(E) Post Sentencing Matters

The resolution agreement obliged Karla Homolka to testify at the trial of Paul Bernardo and to tell the truth. She agreed that while in custody she would continue to fully assist the police.

(F) Other Matters

Karla Homolka agreed not to profit from her crimes by participating in the production of any books, movies, or like endeavours.

In conformity with the resolution agreement, Karla Homolka was questioned by the police over a four hour period starting at 7:45 p.m. on May 14, 1993. That was the induced statement. It was recorded on videotape. In addition to providing extensive detail about the matters under investigation, Karla Homolka gave the police a vital piece of information. Until that time, the police had no evidence other than Karla Homolka directly connecting Paul Bernardo to either Leslie Mahaffy or Kristen French. During the course of the induced interview, Karla Homolka provided the police with some information which enabled the police to make a direct link between Paul Bernardo and the dead body of Leslie Mahaffy.

As noted earlier, Leslie Mahaffy's body parts were found encased in concrete. After their recovery, the concrete was scientifically analyzed. The concrete was found to have been made from a readymix cement. The manufacturer of the readymix cement was identified. The police learned from the manufacturer the names of the retail outlets in the area which sold that particular brand of readymix. The police searched the records of all of those retail outlets to ascertain who had purchased that readymix in the time between the disappearance of Leslie Mahaffy and the date on which her body parts were recovered. The customers whose names appeared on sales slips were all painstakingly searched out and investigated. However, there were many instances where the retailers did not have the names of customers who had made their purchases with cash instead of credit cards. No leads came from

that investigation. Paul Bernardo's name did not appear on any of the sales records. No sales slips for readymix were found during the search of 57 Bayview Drive.

What the police did not know, and could not have known, was that on June 17, 1991 when Paul Bernardo bought the cement in which to encase Leslie Mahaffy's body parts, he paid cash for it and he bought too much of it. After performing the grisly work, he had several bags left over. He returned the excess for a refund. During the course of her induced statement, Karla Homolka told the police that when Paul Bernardo picked her up at work on the day after the murder, he told her about returning the unused bags for a refund. However, in order to get his refund, he had been required to give his name. He was very upset about it. She told the police where she thought he had purchased the readymix. The police immediately investigated. They found that the retailer identified by her had a record showing that on June 17, 1991 Paul Bernardo had returned a number of bags of the kind of readymix which had been identified with the recovered concrete.

Upon the completion of the induced statement and the investigation of Karla Homolka's information regarding Paul Bernardo's return of the readymix, the Crown and the police decided that she had satisfactorily fulfilled her obligations under Item (A) of the resolution agreement. They then moved on to the step provided for in Item (B). In compliance with her obligation to do

so, Karla Homolka gave lengthy cautioned statements on May 15, 16 and 17, 1993.

On May 18, 1993, Karla Homolka was charged with two counts of manslaughter in the deaths of Leslie Mahaffy and Kristen French. She appeared that day in the Ontario Court of Justice (Provincial Division), waived her right to a preliminary hearing, was committed for trial and was released on bail pending her trial. Paul Bernardo was charged with first degree murder and other charges in relation to Leslie Mahaffy and Kristen French.

While on bail pending trial, and in compliance with her duty under Item (C) of the resolution agreement, Karla Homolka gave the police information which led them to the discovery of evidence which directly connected Paul Bernardo to Kristen French at 57 Bayview Drive. On June 17, 1993, she went with police officers to certain areas relevant to the investigation. By that time, the police had regained control of 57 Bayview Drive. She went to the house with the police to point out places where various events had occurred. While in the house, she pointed to an area where Kristen French had vomited while she was in captivity. The floor was carpeted and the carpet had not been removed from that area during the police searches. There was no mark on the carpet indicating anything unusual about it. Karla Homolka told the police that she had cleaned the carpeting after Kristen French had been sick. The carpet was marked and that section was later removed for testing.

The investigators found that, while the upper side of the carpet had been cleaned, some of the vomit had soaked through and left traces on the underside of the carpet. When these traces were examined, they were found to contain vomit matching Kristen French's DNA and semen matching Paul Bernardo's DNA.

Thus, before she was convicted and sentenced, Karla Homolka demonstrated her commitment to her obligation to assist the police in their investigations by providing to them very strong evidence directly linking Paul Bernardo to Leslie Mahaffy and Kristen French. It is probable that such evidence would not have been found without her help.

On July 6, 1993, Karla Homolka appeared in the Ontario Court of Justice (General Division) at St. Catharines for her trial. The presiding judge was Mr. Justice Kovacs. She pleaded guilty to two counts of manslaughter and she was convicted of those charges. She was sentenced to twelve years imprisonment, concurrent on each charge. I have wondered whether it is strictly necessary for me to describe those proceedings in this report. If the first term of reference is strictly interpreted, perhaps it is unnecessary to do so. However, since the resolution agreement properly contemplated the necessary court proceedings, I have decided that this report would not be complete without describing them.

Before I describe them, I wish to refer again to the Martin Report. It approves the necessity of conducting the resolution discussions in private. However, it emphasizes that once a resolution agreement is made, that fact and the circumstances which led to it must almost always be fully disclosed in open court. The court record should disclose that the resolution discussions, the resolution agreement itself and the sentence proposed are all proper. The Martin Committee makes the following observation (at page 315):

...it is also important to ensure that courtroom proceedings that follow resolution discussions serve to verify the propriety of those discussions, and to enhance the public's understanding of both the nature and limits of resolution discussions. The courtroom is an important public forum in which to both affirm and, where necessary, circumscribe the conduct and effect of resolution discussions.

The Martin Committee adds (at page 316):

Resolution discussions may often be most effective when they can be conducted informally, in private, and at the convenience of counsel. The Committee recognizes the need to preserve this aspect of the conduct of resolution discussions. However, on the other hand, the importance of a justice system in Ontario that is open to public scrutiny, and thereby accountable, cannot be understated.

In seeking to reconcile these two conflicting factors, the Committee has made the present recommendation.

A general rule requiring resolution discussions and any agreement reached to be acknowledged in open court enhances the accountability of the administration of justice in many ways. For example, such open acknowledgment helps to dispel any lingering misunderstandings in the public mind as to the propriety of resolution discussions. Professors La Fave and Israel comment that:

"At an earlier time, when the legitimacy of plea bargaining was in doubt, the general practice was not to reveal in court that a bargain had been struck... Today, by contrast, most jurisdictions have moved away from this 'solemn charade'..."

Acknowledging the fact of resolution discussions and the fact of an agreement also alerts the public, witnesses and victims that discussions took place, so that they can understand the extent to which these discussions are a part of the everyday activities of responsible counsel.

Finally, I wish to refer to some extracts from the Martin Report at pages 329-30:

The Committee is of the view that the record created in sentencing proceedings should not be sparse, but, rather, must always fully support the submissions made. The Committee so recommends below, where the issue is discussed in greater detail. In encouraging the sentencing judge to place appropriate emphasis upon a joint submission, the Committee is thereby placing a

corollary obligation upon counsel to amply justify their position on the facts of the case as presented in open court.

Proceeding in a manner consistent with the present recommendation at a sentencing hearing where a joint submission is proposed accords, in the Committee's view, appropriate weight to the "ample" discretion possessed by the Crown as to the conduct of any given prosecution. The Court of Appeal has recognized in *R. v. Naraindeen, supra*, at 72, that sentencing courts should not be "gratuitously interfering with a prosecutorial decision". Yet, proceeding in this manner also continues to ensure that the sentencing judge remains the ultimate arbiter of the propriety of the sentence, and that the sentence is demonstrated to be fit in the circumstances. The sentencing judge will not, in the Committee's view, have committed any error in principle in accepting a joint submission, as recommended above, provided he or she arrives at the independent conclusion, based upon an adequate record, that the sentence proposed does not bring the administration of justice into disrepute and is otherwise not contrary to the public interest. Indeed, this recommendation embodies the essence of the sentencing judge's obligations in passing sentence. In so recommending, the Committee has endeavoured to define the discretion of the sentencing judge in sufficiently broad terms to ensure that the sentence imposed is ultimately just, but at the same time has accorded the parties as much assurance as can be had that their agreed upon resolutions will find favour with the Court. In this way, it is hoped that the justice system and the community as a whole can profit to the greatest extent possible from the benefits of resolution discussions.

As these references show, the Martin Committee was of the opinion that where a resolution agreement has been arrived at: (i) that fact must be disclosed to the court, (ii) full disclosure of all relevant circumstances should be made to the court to show whether the resolution agreement is justified, and (iii) the trial judge must arrive at an independent conclusion, based upon the record, that the proposed sentence does not bring the administration of justice into disrepute and is not otherwise contrary to the public interest.

At the trial on July 6, 1993, Murray Segal and Michal Fairburn appeared for the Crown. George Walker appeared for Karla Homolka. For ease of reference, the complete transcript of the relevant portions of the trial are attached as an appendix to this report. When the Court opened, it dealt with certain issues relating to a temporary publication ban which had been ordered earlier. The portions of the transcript which deal with the publication ban are omitted from the appendix. Karla Homolka was then arraigned on two charges of manslaughter, one respecting the death of Leslie Mahaffy and the other respecting the death of Kristen French. She pleaded guilty to both charges. Further proceedings respecting the publication ban followed. Murray Segal then outlined the nature of the case.

He described Leslie Mahaffy and Kristen French and told the Court that they were innocent victims of predatory conduct. He

advised the Court that he would relate the circumstances of Tammy Homolka's death as an aggravating circumstance in the case. He told the Court that Karla Homolka had been subjected to an escalating pattern of verbal and physical abuse at the hands of Paul Bernardo. He outlined in detail the circumstances of Tammy Homolka's death and the abduction, confinement, torture, sexual abuse and deliberate killing of both Leslie Mahaffy and Kristen French and the indignity performed upon Leslie Mahaffy's body. He described Karla Homolka's participation and complicity in those atrocities. He also advised the Court that Karla Homolka had found young girls to help satisfy Paul Bernardo's urges. He stated that, in his opinion, the evidence against Karla Homolka was sufficient to found murder charges but that, in the exercise of prosecutorial discretion, the Crown would accept convictions for the lesser offences of manslaughter.

Murray Segal then presented Deborah Mahaffy and Donna French to the Court. They gave moving oral victim impact statements in which they opened their hearts to the Court. Their statements are contained in the full official transcript of the day's proceedings. Out of respect for their privacy, I have decided that I will neither summarize their statements nor include them in the appendix.

Murray Segal told the Court that there would be a joint submission that the sentence should be one of twelve years in the

penitentiary on each count to be served concurrently one with the other. He later explained that the joint submission was the result of extensive resolution discussions which took place between counsel. He said that in deciding to lay manslaughter charges, rather than murder charges, the Crown took into account Karla Homolka's disclosure, without which the totality of the facts might never have been known. The Crown also took into account the fact that, while Karla Homolka was present at the time of the killings, she did not cause the deaths of either of the two young women. He dealt at length with the factors which the Crown weighed in arriving at the conclusion to lay manslaughter charges and to recommend the twelve year sentence. In a number of places, he commented upon the assistance which Karla Homolka gave to the police. I think that I should quote the exact words which he used on one of those occasions:

Once the police focused on her she took immediate steps to work toward admitting her involvement and pleading guilty.

She has been of significant assistance to the police. She has participated in extensive interviews and her assistance has led to the uncovering of independent real evidence. She has expressed a genuine willingness to continue her assistance to the police, to testify and to tell the truth.

Obviously there will be those who question why the Crown is not recommending an even greater penalty in virtue of the horrendous facts. But at the same time it is the Crown and the police who are perhaps in the best

position to weigh the value of her assistance against the state of the evidence prior to her revelations and the potential impact on subsequent trials. Without her statements the true state of affairs may never have been known. But with her assistance comes the unsettling accounts that causes one to recoil.

Her pleas have obviated a lengthy trial involving her. Her pleas, in terms of her own involvement have spared the victims' families a trial involving her. A guilty plea is a traditional hallmark of remorse.

The certainty of conviction regarding her has been considered by the Crown as well. *Importantly, it is recognized by the Crown that she may help to ensure that those who may also be responsible for these odious crimes are brought to justice.* (emphasis added)

The words which I have emphasized obviously refer to Paul Bernardo who, as Murray Segal correctly suggested, was one of this province's and the country's most violent and dangerous individuals. Ultimately, her testimony ensured that he was brought to justice and convicted for his "odious crimes".

Murray Segal weighed what was in Karla Homolka's favour and what was against her. He did not minimize her conduct. He said it represented the depths of human behaviour. At the end of his submission, he said this to the Court:

Ultimately I am respectfully submitting that all of the factors need to be weighed and balanced. An appropriate sentence has to reflect society's

denunciation of this accused. The sentence must serve to demonstrate the need to protect vulnerable persons, especially young women. In all of the circumstances, I would respectfully submit that, bearing in mind Tammy Homolka's death, that the sentence of this Court respecting the two charges of manslaughter involving Leslie Mahaffy and Kristen French be twelve years on count one, twelve years on count two, concurrent to one another...

George Walker acknowledged the horrific nature of Karla Homolka's conduct and did not try to minimize it. He stated that a twelve year sentence may appear to some to be lenient, but argued that it was a significant period of time for a person with no criminal record or evidence of prior criminal conduct. He correctly told the Court that Karla Homolka had been of "utmost" assistance to the authorities and that she continued to be so. He reviewed in detail the medical reports of Drs. Arndt, Malcolm and Long which showed that Karla Homolka suffered from post traumatic stress disorder caused by spousal abuse. He pointed out that the doctors were of the opinion that she did not constitute a future danger to the public. He referred to the decision of the Supreme of Canada in *Lavallee v. The Queen* (1990), 55 C.C.C. (3d) 97 which recognized that it is too simplistic to expect that a battered woman can easily leave or refuse the demands of an abusive spouse. Madam Justice Wilson, who spoke for the Court, explained at page 118 that, given the context in which spousal violence occurs, the mental state of a woman at a critical time "cannot be understood

except in terms of the cumulative effect of months or years of brutality". He specifically did not rely on *Lavallee* to advance a legal defence of compulsion but cited the case to somewhat explain, although not justify, Karla Homolka's conduct. He directed the Court to the mitigating factors of an early plea of guilty and the remorse which that indicates as well as the remorse which she had expressly demonstrated.

Mr. Justice Kovacs gave extensive and detailed reasons for accepting the pleas of guilty to manslaughter and imposing the proposed twelve year sentence. He reviewed in detail the circumstances of the crimes committed against Leslie Mahaffy and Kristen French and Karla Homolka's participation in them. He analyzed the circumstances of the death of Tammy Homolka and the legal consequences of those facts being placed in evidence. He took note of Karla Homolka's previous good record, her youth and the psychiatric evidence which confirmed that she had been systematically abused by Paul Bernardo, both physically and psychologically. He accepted the medical evidence that she posed no future danger to society.

He considered the aggravating factors. The conduct of Karla Homolka was monstrous and depraved. The impact upon the families of the victims was unimaginably tragic. He noted the impact of the crimes upon the community. He took into account the callousness of her conduct and the covering up after the crimes.

He also considered the mitigating factors. These were her early guilty plea, her youth and prior good record and the fact that she was a battered wife. The most significant mitigating factor was Karla Homolka's co-operation with the police. I cite his words:

The most significant and compelling mitigating factor has been her co-operation with the police and her agreement to co-operate with the prosecution until justice has been done. In view of the great care that was taken by the accused in concealing her horrendous crimes, her co-operation is particularly significant. Her co-operation is particularly significant in that it has led, I understand, to other evidence.

He found that, while this case fell into the category of the worst case, Karla Homolka did not fall into the category of the worst offender and, in conformity with the law, held that therefore the maximum sentence was not applicable. His words bear repeating:

The Crown has charged the accused under Section 236 of the *Criminal Code* with manslaughter. The maximum sentence for manslaughter is life imprisonment. The maximum sentence in law is reserved for the worst offence committed by the worst offender. This accused has committed the worst crimes, however she is not the worst offender - for whom the maximum sentence is designed. I find she is not the worst offender because:

- (1) She has no previous criminal record;
- (2) Most significantly she has co-operated with the police in giving evidence, some of which might not otherwise be available in this type of crime, particularly in confinement cases. She gave that co-operation not only in respect of her own involvement in the crime. This co-operation was, and will be of particular assistance, partly in view of extraordinary steps taken in an attempt to conceal evidence in the crime, with respect to another offender;
- (3) By her plea of guilty she has obviated a trial and thus avoided additional trauma for the victims' families.

Therefore, while the crimes fit into the category of the worst crimes, the offender does not fit into the other category, i.e., the worst offender which category is required to impose the maximum sentence. It is for that reason that the maximum sentence of life imprisonment is not applicable in this case. (emphasis in original)

Finally, after reviewing a number of legal authorities, he concluded that the proposed sentence was acceptable. He then imposed the twelve year sentence.

I have summarized the trial proceedings because they demonstrate to me that the recommendations of the Martin Committee with respect to the disposition of a resolution agreement were

strictly complied with. Counsel disclosed to the Court that their recommended disposition came as a result of resolution discussions. Full disclosure of all the relevant circumstances of the case was made to the Trial Judge. The Trial Judge, after considered reasons, arrived at an independent conclusion that the proposed disposition satisfied the public interest and was proper to the administration of criminal justice.

✱ I now return to the resolution agreement entered into on May 14, 1993. It is very easy, after the event, with the illuminating brilliance which hindsight provides, to be critical of the decision to enter into it. As I mentioned earlier, there is a profound and widely felt sense of unease at the fact that Karla Homolka was sentenced to serve only twelve years for her part in the most despicable crimes which I have seen in over forty years of working in the criminal courts of this province. We all know that had the videotapes been available to the authorities on May 14, 1993, the Crown would never have made this resolution agreement with Karla Homolka.

However, I do not think that it is fair to criticize a decision on the basis of after acquired information which the decision maker did not have at the time that the decision was taken. Rather, one must put one's self in the decision maker's position at the time that the decision was made and look at the matter in the light of the information which was then available.

In a summary way, it can be seen that in the spring of 1993, the Crown and the police knew that a vicious, sadistic rapist and murderer had committed heinous and terrifying crimes. While they could prove some of the rapes against him and had well founded suspicions that Paul Bernardo was the murderer, they had no evidence upon which they could charge him or successfully prosecute him for murder. They had good reason to believe that videotapes had been made and were probably still in existence which would provide the necessary link between him and the murder victims. They had searched for the videotapes but had not found them. They did not know if they would ever find the videotapes. Many articles had been removed from 57 Bayview Drive and were being submitted for forensic testing. It was hoped that helpful evidence would be derived from that testing. It was, however, unknown whether anything would come of it and, if so, when. There was an obvious and pressing need to bring the killer to justice but the police were frustrated by their lack of evidence.

That is the context in which this decision ought to be judged. The Crown and the police had the opportunity to get the evidence which they needed from Karla Homolka. Unfortunately, there was a price to be paid. Like every other person, she had the right to refuse to incriminate herself. It was only if there was an advantage to her to do so that she would provide the necessary evidence to prove charges of murder against Paul Bernardo. In providing such evidence she would necessarily incriminate herself.

If the Crown had refused to negotiate for her evidence, it was foreseeable at that time that Paul Bernardo would not and could not be brought to justice for the brutal murders which he was strongly suspected of having committed.

It is my firm conclusion that, distasteful as it always is to negotiate with an accomplice, the Crown had no alternative but to do so in this case. The Crown has a positive obligation to prosecute murderers. It is, as Dan Mahaffy put it, often the "lesser of two evils" to deal with an accomplice rather than to be left in a situation where a violent and dangerous offender cannot be prosecuted.

I have set out in some detail the circumstances surrounding the resolution discussions and the negotiations themselves. The conduct by counsel on both sides was professional and responsible, having regard to the duties which they owed to the respective parties. The process which was followed corresponded with that recommended by the Martin Committee and, in my opinion, was unassailable.

The public interest demanded that Paul Bernardo be prosecuted for murder. I do not see how it could have been responsible to delay the institution of that prosecution to some uncertain time in the future on the hope that some evidence might turn up which would make Karla Homolka's testimony unnecessary. I think the

circumstances demanded that the Crown act and that it act in a timely fashion. It was necessary for the Crown to accept Karla Homolka's pleas of guilty to manslaughter in order to secure her testimony and her co-operation in the investigation.

Among responsible, professional people, there can often exist an honest dispute about what is an appropriate sentence in a given case. Lawyers and judges usually talk about ranges because no one can ever say with certainty what is the only correct sentence in a given case. In the course of my inquiry, I have consulted with a number of lawyers on both the Crown and defence sides of the bar who have experience and whose opinions I respect. The range which emerged, having regard to Karla Homolka's co-operation with the authorities, was from ten to fifteen years. That range confirmed my own view of what an appropriate sentence should be. That range is high for a first time offender in a manslaughter case in Ontario. It is high because there is no doubt that it is the worst case of manslaughter which one could imagine. The range cannot reach or approach the maximum sentence of life imprisonment because, as Mr. Justice Kovacs found, Karla Homolka is not the worst offender.

It is my view that, in this case, a sentence anywhere in the range of ten to fifteen years would have been a fit one. The Crown

agreed to a sentence which was close to the mid-point of that range. I think, therefore, that it agreed to an appropriate sentence.

My conclusion is, in the hopefully unique circumstances of this case, for which no known precedent exists, that the resolution agreement entered into by Crown counsel with Karla Homolka on May 14, 1993 was appropriate.

I have reached this conclusion independently. I must say, however, that I am comforted by the fact that an experienced and able judge, whose opinions I have always respected, and who was charged with the awesome responsibility of deciding the case, held the same view that I do.

TERM OF REFERENCE NO. 2

WHETHER THE ADVICE GIVEN BY CROWN COUNSEL TO THE GREEN RIBBON TASK FORCE IN CONNECTION WITH POSSIBLE CHARGES AGAINST KARLA HOMOLKA ARISING OUT OF A SEXUAL ASSAULT ON JANE DOE WAS APPROPRIATE IN ALL THE CIRCUMSTANCES.

There are serious unsolved crimes, here and elsewhere. There can be no room for error in the successful prosecution of the offender for the safety of the community... (emphasis added)
July 6, 1993, The Honourable Mr. Justice Francis Kovacs

Those words were said by Mr. Justice Kovacs when he sentenced Karla Homolka. While he said them in the context of the importance of the assistance which Karla Homolka had given to the police and to the Crown, I think his words explain the approach which was properly taken by the trial counsel who conducted the prosecution against Paul Bernardo for murder and by the Management Committee which made the decision in question. I will return to this later.

The advice which is referred to in the second term of reference was advice which the Crown gave to the Green Ribbon Task Force on May 26, 1995. The Crown advised that it was not in the public interest to lay a charge of sexual assault against Karla Homolka in respect to the assaults upon Jane Doe. The advice was contained in a letter written by James Treleaven to the Green

Ribbon Task Force. The resulting decision not to prosecute her was later conveyed in writing to George Walker so that Karla Homolka would be apprised of it before she testified at the trial of Paul Bernardo.

The decision not to charge Karla Homolka in respect to the assaults upon Jane Doe was not taken in a vacuum. It was taken as part of the trial strategy adopted for the prosecution of an extremely dangerous offender.

I will discuss the events involving Jane Doe and the circumstances surrounding the making of the decision that Karla Homolka should not be charged in respect of the assaults committed upon her. Before doing so, I wish to explain the decision making structure which was put in place and identify those persons who eventually made the decision.

In an earlier part of this report, I mentioned that in the summer of 1993 a Management Committee was formed to provide direction and advice to the two separate prosecution teams which were working on the case. One of those teams was responsible for the charges relating to Leslie Mahaffy and Kristen French. The other team was responsible for all of the other sexual assault charges.

The Management Committee was composed of four members. One member of the Management Committee and its Chair was Michael Code. The other three members were Regional Directors of Crown Attorneys. One was James Treleaven who was the Regional Director of the Central South Region. That region covers the Niagara Peninsula. James Treleaven is a career prosecutor. He was called to the Bar in 1967. He acted as a part time Assistant Crown Attorney from 1967 until 1971. He became a full time Assistant Crown Attorney in 1971. He was appointed a Crown Attorney in 1972 and has been a Regional Director of Crown Attorneys since 1989.

The third member of the Management Committee was Jerome Wiley, who was the Regional Director of Crown Attorneys for Metropolitan Toronto. He has been a prosecutor since early 1973. He was called to the Bar in 1972. He was appointed an Assistant Crown Attorney in 1973, Deputy Crown Attorney for Toronto in 1983, and Crown Attorney for Toronto in 1987. He was appointed Regional Director of Crown Attorneys for Toronto in 1989. He is now counsel to the Metropolitan Toronto Police.

The fourth member of the Management Committee was Leo McGuigan who is Regional Director of Crown Attorneys for the Central West Region. He was called to the Bar in 1960 and was in private practice for ten years before becoming an Assistant Crown Attorney in 1970. He was appointed a Crown Attorney in 1975 and has been a Regional Director since 1989. Leo McGuigan is possibly one of the

most experienced and best known Crown Attorneys in Ontario. He has the reputation of being a very formidable prosecutor. He has been colourfully and not inaccurately described by Kirk Makin in his book on the Guy-Paul Morin case, "Redrum The Innocent", in the following words:

McGuigan was something of a legend. His mixture of blarney and right-wing toughness has influenced a generation of go-git'm prosecutors. He specialized in presenting juries with pugnacious, plain-spoken logic. Between the lines, his manner of speaking said to a jury: "Okay, now that we've heard that highflown nonsense from the defence, let's get down to the real world where people commit crimes and go to jail for it".

Murray Segal was not a member of the Management Committee, but he was asked for and he gave his advice to it from time to time.

Raymond Houlahan is the Crown Attorney in St. Catharines. He has been a trial prosecutor all of his working life. He was called to the Bar in 1970 and immediately started working as an Assistant Crown Attorney in Windsor. In 1977, he was appointed Crown Attorney for the County of Bruce. He became the Crown Attorney in St. Catharines in 1984. He has conducted a number of major prosecutions in other parts of the province as a Special Prosecutor. The Assistant Crown Attorney whom he chose to assist him with the prosecution of Paul Bernardo was also a very experienced trial lawyer and prosecutor. Gregory Barnett was

called to the Bar of British Columbia in 1974. He practised in British Columbia and the Yukon until 1981 when he became a Crown Attorney in British Columbia. He moved to St. Catharines in 1991 where he joined the Crown Attorney's staff as an Assistant Crown Attorney.

At all material times in the Paul Bernardo case, Mary Hall was the Crown Attorney for Scarborough. Mary Hall was called to the Bar of British Columbia in 1977. She moved to Ontario and, immediately following her call to the Ontario Bar in 1979, she joined the Toronto Crown Attorney's office as a full time Assistant Crown Attorney. In 1988 she was appointed Crown Attorney for Scarborough. Mary Hall was a member of the Martin Committee.

Very early on, probably shortly after Paul Bernardo was charged, Raymond Houlahan and Inspector Bevan assessed the evidence and, on the basis of what they knew of Paul Bernardo, made what turned out to be a very accurate prediction of what his defence to the murder charges would be. They predicted that he would be forced to admit the abductions and sexual assaults but that he would claim that Karla Homolka, while he was either out of the room or out of the house, had killed the two girls for reasons known only to herself. He would say that he did not anticipate her doing such a thing. He would say that he had done some very bad things in his life but that he had never killed anyone. His defence would

be that he was not a killer: Karla Homolka was. That was almost exactly the defence which he ultimately presented.

Raymond Houlahan also accurately predicted that the whole case would turn upon the credibility of Karla Homolka. In correspondence dated August 27, 1993, he stated that Karla Homolka was "the essence and nucleus of our case re Mahaffy and French murders". His prediction was proven correct by the manner in which John Rosen and Anthony Bryant conducted the defence. The cross-examination of Karla Homolka at the trial of Paul Bernardo very vigorously attacked her credibility. In his jury address, John Rosen said that the only issue in the case was whether Paul Bernardo killed Leslie Mahaffy and Kristen French or whether Karla Homolka did it. He argued that the determination of that issue depended upon the jury's findings about the credibility of Karla Homolka. He put the issue in this way:

The credibility to be decided in this case, members of the jury, and on which this case falls or stands for the Crown, is the credibility, or believability, or honesty, or integrity of Karla Homolka because she is the only one who gives any account that differs from that of Paul Bernardo as to what happened to these girls. She is the only one who points the finger at him and says that they died by ligature strangulation at his hands, not hers.

Members of the jury, that's what it comes down to. Do you believe her." (emphasis added)

He then argued that the testimony of Karla Homolka was not entitled to any credibility. He said:

Members of the jury, that is without a doubt an out and out lie on her part. It is a major lie. It is something that goes to the heart of her credibility. It is something that reveals her for what she really is. A person who would lie, cheat, steal and manipulate the evidence in an effort to protect herself. Yesterday, today and tomorrow and forever in the eyes of her community, and her family, and her friends as well as in the eyes of the prosecution. It is that kind of evidence that the prosecution wishes you to disbelieve Paul Bernardo on, and accept beyond a reasonable doubt so that you can convict him of two counts of first degree murder and, therefore, satisfy your desire for vengeance for the two girls that are dead.

Forget what happens to her. She's done. Well, members of the jury, you can't forget that. You can't put it aside and you can't ignore it. Would you condemn a dog, in dogcatcher's court who is alleged to have bitten someone on a witness like that, on evidence like that? How could you condemn a fellow citizen, another human being no matter how bad he is on her word? And her word, members of the jury, her word.

At another part in his jury address, he said:

...once again, ladies and gentlemen of the jury, you are driven by the nature of the case to ask the same question: do you believe Karla Homolka? Is her evidence believable and credible? Does it satisfy the intellect,

soothe the conscience? Would you make the most important determination in your life based strictly on her evidence?

It is apparent that at the very end of the case, as at its beginning, the murder charges against Paul Bernardo depended entirely upon the credibility of Karla Homolka. Although the videotapes had been recovered, and they showed Paul Bernardo doing terrible things to both Leslie Mahaffy and Kristen French, they did not show who actually killed the young women. That eventually was the only issue in the case. Karla Homolka was always truly the essence and nucleus of the Crown's case on the murder charges against Paul Bernardo. If the jury had even a reasonable doubt about the credibility of Karla Homolka on that issue, Paul Bernardo may well have escaped with convictions for manslaughter instead of murder. The prosecutors trying Paul Bernardo determined very early on that they had to do what they could to avoid serious harm being caused to the credibility of their most important witness.

The Crown has always had a duty to disclose its case to the accused. This duty has been expanded and enforced by the Supreme Court of Canada in its judgment in *Stinchcombe v. The Queen* (1990), 68 C.C.C. (3d) 1. There is no corresponding duty upon the accused to disclose his or her case to the Crown or indeed even to indicate to the Crown what the defence might be. Thus, it is necessary for the Crown to anticipate what the defence may be and prepare in

advance to meet it. In anticipation of the defence, the Crown sought expert opinions from two psychiatrists and two psychologists of its choice to attempt to deal with the expected attack on Karla Homolka's credibility. I will return to those opinions in some detail.

When the essence of the Crown's case depends upon the testimony of an accomplice witness, the Crown is presented with a problem of considerable difficulty. This problem is how the Crown should treat the witness when the witness is testifying. There are basically two ways in which a prosecutor will deal with an accomplice called by the Crown in support of its case against the person who is alleged to be the main perpetrator. The choice of method is largely a judgment call made by the trial prosecutor depending upon the circumstances of the case. One method is for the prosecutor to treat the witness with disdain and give the jury the impression that it is unpleasant to have to present such an undesirable witness. That approach is most effective if there is adequate independent evidence supporting the accomplice's testimony. The other method is, if there are circumstances which may tend to mitigate or at least explain the accomplice's participation in the crime, to present those circumstances to the jury so that the accomplice appears in a less unfavourable light.

In this case, the Crown knew that there was strong evidence suggesting that Karla Homolka was a battered spouse and that she

contended that her criminal acts had been committed while she was under extreme duress and while she was under the control and domination of Paul Bernardo. It was the responsibility of Raymond Houlahan and Gregory Barnett, as the trial prosecutors, to decide which method they would use with Karla Homolka. In the exercise of their best judgment, they made an early decision that those circumstances ought to be fully explained to the jury. It was their opinion that, by doing so, her credibility with the jury would be strengthened. As I turn to discuss the issue of Jane Doe, it is necessary, I think, to remember that the trial prosecutors were of the opinion that the credibility of Karla Homolka was essential to the successful prosecution of the first degree murder charges against Paul Bernardo.

In 1991, Jane Doe was 15 years of age. She had known Karla Homolka for two years, having met her at a pet shop where Karla Homolka worked. There were three discrete episodes of reprehensible conduct by Karla Homolka towards Jane Doe. The first episode was her inviting Jane Doe to 57 Bayview Drive with the knowledge that Paul Bernardo intended to have sexual relations with her. The second episode was a sexual assault which Paul Bernardo and Karla Homolka perpetrated upon Jane Doe during the night of June 7 - 8, 1991. Throughout this report, I will refer to that incident as the June 7, 1991 assault. The third episode was a

sexual assault which they perpetrated upon Jane Doe in the early morning of August 10, 1991. It is necessary to review how and when these matters came to light.

On February 16, 1993, the police had learned that Jane Doe was a friend of Karla Homolka. They interviewed her to determine whether Karla Homolka may have said something to her concerning the Leslie Mahaffy or Kristen French murders. Karla Homolka had not become a Crown witness at that time and the police were actively seeking evidence against her as well as against Paul Bernardo.

In that first interview with Jane Doe, they learned that Karla Homolka had invited Jane Doe to 57 Bayview Drive. She told the police that she had visited overnight with Karla Homolka. Paul Bernardo was not there during the evening but was present when she got up in the morning. I digress to say that the police investigation later established that this visit probably occurred overnight on June 7 - 8, 1991 and on that night Jane Doe was drugged, anaesthetized and sexually assaulted by both Paul Bernardo and Karla Homolka. Jane Doe has no recollection of those acts being performed upon her. She told the police that she became a frequent visitor to 57 Bayview Drive and was a regular companion of Paul Bernardo and Karla Homolka. She went on at least one trip to Toronto with them. She also told the police that Paul Bernardo began making sexual overtures to her to which she finally succumbed. She performed fellatio on him on a number of occasions.

The relationship ended in December of 1992 when she refused to have sexual intercourse with him.

On May 14, 1993, during her induced statement, Karla Homolka told the police that Paul Bernardo always wanted her to find young girls for him. She said that she did get two young girls who then had voluntary relationships with him. She specifically named Jane Doe as one of those girls. At her trial on July 6, 1993, Murray Segal advised the Court of this conduct on the part of Karla Homolka.

I propose to deal with the episode of obtaining young women for Paul Bernardo quite summarily. It is my view that Karla Homolka's conduct of inviting young women into the presence of a man as dangerous as she knew Paul Bernardo to be was obviously reprehensible. I have serious doubt, however, that it amounted to criminal misconduct constituting an offence pursuant to any provision of the *Criminal Code*.

If that conduct did amount to a criminal offence, then, in my opinion, it was expressly covered by the resolution agreement of May 14, 1993. Karla Homolka specifically disclosed that conduct in her induced statement and that conduct was specifically mentioned to the Trial Judge by Murray Segal when he outlined the circumstances of her culpability at her trial on July 6, 1993.

If the conduct of Karla Homolka in befriending Jane Doe so that Paul Bernardo could have sexual relations with her could amount to a criminal offence, it is my view that, by the express terms of the resolution agreement, any sentence which she could have possibly received is included in the twelve year sentence which was imposed.

The resolution agreement required Karla Homolka to disclose in her induced statement any criminal activity in which she had engaged. She disclosed that conduct. The Crown and the police were satisfied with her disclosure and proceeded with the agreed charges.

The resolution agreement provided for two charges of manslaughter. It also stated:

The defence will consent to the reading in of facts of any other crimes as the Crown deems appropriate, the sentence of twelve years and twelve years concurrent *taking into account any such additional matters.*
(emphasis added)

The Crown read in the fact that Karla Homolka had found young girls for Paul Bernardo. In the light of that provision, if Karla Homolka's conduct did constitute a criminal offence, her sentence of twelve years covers that offence. I need say no more about this episode because it is clear that the Crown never thought that the

conduct of Karla Homolka in obtaining the young women could be the subject of a charge against her.

The other two episodes of reprehensible conduct raise more complex problems. During the search of 57 Bayview Drive, a large number of innocuous videotapes were discovered. On February 22, 1993, a videotape was found in Paul Bernardo's briefcase which contained a short segment that was very compromising of Karla Homolka. It showed her committing a sexual assault upon the nude body of a prostrate obviously unconscious female. Because of the angle from which the videotape was taken, the face of the victim could not be identified. The Crown and the police initially thought that the unconscious person in the segment was Kristen French. A photograph of a frame of the segment was made and a copy of it was shown to George Walker by Murray Segal during one of their meetings leading up to the resolution agreement.

The photograph was briefly shown to Karla Homolka by the police during her cautioned interview on May 16, 1993. The following is the exchange which took place between the police officers and Karla Homolka when she was shown the photograph:

Det. Bob Gillies:

Q. Okay. What I have here is a print, it is a photograph that is taken from a videotape?

A. Oh.

Q. Okay. They can take a picture off a frame of a videotape.

A. Yup.

Q. I would like you to look at that for me, please. It is out of focus. You have to focus.

A. Boy, wow, that is hard. Okay. That is the person's head, right, and this is their body? I don't know who that is. My first, it looks kind of like my sister. It looks kind of like my sister.

Q. Your sister?

A. Tammy. But it is hard to tell.

MS. METCALFE: Why do you think that Karla?

A. I don't know, just the, I don't know, just the feeling I get.

Q. What about that picture is giving you that feeling?

A. Well, Tammy was in the same position except she was a little bit more over on her side, but the body looks basically like from what I can see, the body looks similar. Um what is all this? Can you tell me?

DET. BOB GILLIES: What do you see it to be? What else can you see in the picture besides?

A. Well this looks like some alien hand. Um this looks like a pillow, a big pillow. Am I getting these things right?

Q. Does the room look familiar to you or can you---?

A. I can't tell from this, no. No I can't tell. Do you have another one?

Q. I think I would like to wait until I can get some better quality pictures.

A. Okay.

Q. Okay.

A. I can't really tell.

A. Wait. This, no that's wrong. I'm not sure.

MS. METCALFE: What were you going to say Karla?

A. This does look like a pillow because of the ruffle but that can't be a pillow. It is too big to be a pillow. No, I'm not sure. But it looks like my sister. That is just the feeling I get.

DET. BOB GILLIES: Okay. I think we're going to have, it's ten to five. I think we're going to break...

The subject of the identity of the victim was not pursued further in Karla Homolka's cautioned interviews nor was she shown any other pictures, or the videotape segment itself. In fact, she was not shown that picture again, any other picture, or the videotape from which it was made at any time until February 1995.

Karla Homolka was sentenced on July 6, 1993 and began serving her sentence at the Prison for Women in Kingston. While there, she began having dreams and thought she was remembering things she may have done with Jane Doe. On October 6, 1993, she wrote to George Walker.

Before setting out the letter in full, I should explain for the reader that the "Bob Gillies" referred to in it is Sergeant Robert Gillies of the Niagara Police. He was one of the officers who interviewed Karla Homolka in her cautioned statement on May 16, 1993. The other officer who participated in that interview was Detective Mary Lee Metcalfe of the Metro Police. The letter is handwritten and, at one point in it, Karla Homolka refers to the fact that "Bob" (obviously Gillies) and a person whose name I am

unable to decipher showed her a photograph. The transcript of the interview shows that both officers, Robert Gillies and Mary Lee Metcalfe, asked her questions about the picture. I have therefore inserted the name Mary Lee in the letter in the place of the writing which I cannot decipher. Because Jane Doe's real name appears in the letter and discloses her identity, I will not make the letter an appendix to the report. Where her real name appears I have substituted Jane Doe. Subject to the changes set out above, the letter reads as follows:

6 October 1993

Dear George,

Hi. I am having a major problem. I've remembered something else that I have to tell Bob Gillies. Paul raped Jane Doe, a friend of mine. I don't remember much of it. I can picture it happening in our livingroom. She was drunk and had passed out. The next thing I remember is her falling off of the bed upstairs. I have been racking my brain for days now, trying to piece the whole thing together but I just can't. I can't even go to my doctors for help because they'll just report it. What I am really afraid of is that I was more involved than I can remember. Bob and Mary Lee showed me a still photograph taken from that videotape and I couldn't identify it. What if it was me with Jane Doe? Why didn't I remember all of this when they first questioned me? I have to tell them but what if they nail me for this too? Can you do something to make sure they don't?

I can't talk to you on the phone at all because the conversations are recorded and listened to. They never

read mail to and from lawyers - they can't - so this is the only safe way for me to talk to you. Please write back soon with some advice. And also remember that I want to tell them. I feel guilty and have to get it off of my conscience. Thanks, George. I feel like I'm going crazy.

Karla (emphasis in original)

With Karla Homolka's permission, George Walker disclosed the letter to the police. By that time, an agreement had been reached among the authorities that the Metro Police would investigate all sexual assaults allegedly committed by Paul Bernardo, wherever committed, with the exception of those assaults which involved Leslie Mahaffy or Kristen French. Under this arrangement, it was the responsibility of the Metro Police to investigate any suspected assault on Jane Doe.

On December 6, 1993, Sergeant Gillies and another officer from the Niagara Police interviewed Karla Homolka at Kingston in respect of certain matters which did not pertain to Jane Doe. At the conclusion of the meeting, Karla Homolka told the officers that she had thought their visit would be about her concerns regarding Jane Doe. Sergeant Gillies told her that the Jane Doe investigation was the responsibility of the Metro Police and that they were not prepared to discuss it with her. Nevertheless, she said that she recalled some details of an incident involving Jane Doe at 57 Bayview Drive. She said that she recalled the incident occurring

between the time that she and Paul Bernardo moved into 57 Bayview Drive and the time of their marriage. That would place the incident between February and June 29, 1991. She said that Jane Doe had been given one Halcion pill and a number of alcoholic drinks. She said that after Jane Doe passed out, Paul Bernardo removed her clothing and raped her. She said that they then noticed that Jane Doe had stopped breathing. Karla Homolka immediately called 911. Jane Doe either had not stopped breathing or, if she had, she began to breathe again. Karla Homolka made another call to 911. She reported that she had been mistaken, the person was alright and asked that the call be cancelled. Since the response to the call had not been completed, the call was cancelled and no ambulance attended at 57 Bayview Drive.

On a number of occasions between December 6, 1993 and February 2, 1994, the Niagara Police spoke to Karla Homolka about various matters. On at least one occasion, they again told her that they could not discuss the matter of Jane Doe with her.

On February 2, 1994, two officers from the Metro Police interviewed Karla Homolka at length about the Jane Doe matter. Those officers were Detective Sergeant Whitefield and Detective Metcalfe. She told them that she had been trying to recall the details but that her memory was not really clear. She was unsure of the time frame but thought that it was around the time of the wedding. She said that Paul Bernardo told her to get Jane Doe

drunk and then give her sleeping pills. She said that Jane Doe drank quite a bit and then she gave her one Halcion pill. She said that Jane Doe passed out and then Paul Bernardo arrived. She said that he told her to lie beside Jane Doe while he raped her. She complied. She said that the next thing she recalled was Paul Bernardo saying that Jane Doe was not breathing. Karla Homolka immediately called 911 and reported that her friend had been drinking, had passed out and now was not breathing. She was told that help would be sent. When she and Paul Bernardo realized that Jane Doe was breathing she cancelled the call. Paul Bernardo did not resume his attack on Jane Doe and Karla Homolka watched over her until morning to ensure that she was alright.

Upon being questioned about the details, Karla Homolka said that she thought the date of the incident was probably May or June, 1991. She expressed considerable confusion about the details of the incident and said that it was a haze in her mind. She said that sometimes she recalled two different images of the same incident and she was not sure which one of them was the correct one. She told the officers that her inability to recall clearly was a problem which she was having fairly often at the time. It is apparent from reading the transcript of that long interview that Karla Homolka was not able to recall any more details of the incident itself. She did say, however, that the next morning Jane Doe came downstairs and was sick to her stomach. She said that this remained a bit of a joke between Jane Doe and Paul Bernardo

because Jane Doe used to say to him that the first time they met he made such an awful impression upon her that she became ill.

Police investigation of the records of the emergency response personnel shows that in 1991 only one emergency call was received from 57 Bayview Drive. That call was cancelled two minutes after it was received. The messages received correspond with Karla Homolka's description of her calls. The two calls were made on August 10, 1991. The first call was made at 3:36 a.m. and the second one at 3:38 a.m. These records fix August 10, 1991 as the date of a sexual attack upon Jane Doe to which Karla Homolka was a party.

Following a detailed analysis of the short segment of videotape found on February 22, 1993, the police were able to ascertain, by the spring of 1994, that the unconscious female was probably Jane Doe. They concluded that the female was neither Kristen French, as they had first surmised, nor Tammy Homolka, as Karla Homolka had first thought. They established the likely identity by comparing some distinctive bodily features of the unconscious person in the videotape with identical features on the body of Jane Doe.

The police were also able to fix the probable date of the videotaped event by reference to certain things which were heard on the audio portion of the videotape. It is now quite certain that

the videotape was made on June 7, 1991. The evidence of Jane Doe confirms the June date of the incident. She said that the first time she stayed over at 57 Bayview Drive was in June, some time before the wedding. She said that she had a lot to drink that night and in the morning, when she first met Paul Bernardo at the house, she was sick to her stomach and vomited. That coincided with what Karla Homolka had told the police in their interview on February 2, 1994.

By the spring of 1994, the Crown and the police believed that there was evidence of two sexual assaults upon Jane Doe. The first assault was shown in the short videotape segment and occurred on June 7, 1991. The second assault was described by Karla Homolka and occurred, by reference to the 911 calls, on August 10, 1991. I think that the two assaults should be examined separately. I propose to deal with the August 10, 1991 assault first.

Before dealing with the two assaults, I should say that my analysis of the disclosure which Karla Homolka made to the police in her statements to them suggests to me that, while she talked of one incident, she was actually remembering some parts of the two incidents. There is no doubt that her recollection of the 911 calls relates to the August 10, 1991 assault. However, when she remembered that Jane Doe was sick in the presence of Paul Bernardo the morning following the assault, she must have been remembering part of the June 7, 1991 assault.

Jane Doe does not remember either of the two assaults. Indeed, she testified that Karla Homolka never made any sexual advances to her or indicated that she had any sexual interest in her or in any other woman. The only evidence which establishes an assault upon Jane Doe on August 10, 1991 comes directly from Karla Homolka herself. Without her evidence, there is no basis for a prosecution against her or Paul Bernardo. Nowhere in all of the material that I have read in the course of this inquiry have I found any suggestion, however remote, that Karla Homolka ought to be prosecuted for that offence.

I have heard considerable debate about whether the resolution agreement has the effect of immunizing Karla Homolka from prosecution for that offence. George Walker has strongly argued that the resolution agreement expressly provides immunity. It is my view that, even if the express language of the resolution agreement does not prevent the prosecution of Karla Homolka for the August 10, 1991 assault on Jane Doe, such prosecution would constitute a serious violation of the spirit of the resolution agreement. Moreover, my review of the contemporary record suggests that this view was probably taken by the Crown with respect to that offence.

Before giving the reasons for my opinion, I want to say a word about resolution agreements made with accomplices for the purpose of obtaining their co-operation and securing their testimony. My

first observation is that there is no book of precedents which is used in setting out the issues and how they are to be covered. Because my inquiry is directed at the provincial prosecuting authority, I thought that however sound the advice I would get from a provincial Crown counsel might be, such advice could appear to be self-serving. I decided, therefore, to seek input from an experienced federal prosecutor. I asked Robert Hubbard, General Counsel in the Toronto office of the Department of Justice, to give me the benefit of some of his experience.

Robert Hubbard has a great deal of experience in prosecuting individuals who engaged in the importation and sale of narcotics. The nature of large scale drug operations means that it is rarely possible to get evidence against the kingpins because they insulate themselves from the danger of criminal prosecution by acting through others. Often, the only way such persons can be prosecuted is through the use of accomplices who have been involved in the enterprise with them. That necessitates resolution agreements with the accomplices for total immunity or for what in *Chan Wai-Keung v. The Queen, supra*, the Privy Council calls a "discount".

Robert Hubbard told me that it is necessary to create an atmosphere which encourages the accomplice to tell the truth. He said that such an atmosphere can only be created by an understanding that, so long as the accomplice tells the truth, he or she will not be prosecuted for any offence committed during the

accomplice's relationship with the principal offender. He said that the understanding must be interpreted liberally in the accomplice's favour.

He said that there are two basic reasons why that understanding and its liberal interpretation are necessary. The first reason is a very practical one. If word got out that the Crown interpreted resolution agreements very narrowly and that it took a technical position that other offences disclosed by an accomplice were not covered by the resolution agreement, then accomplices might be reluctant to co-operate with the Crown and the police. The second reason is that the fear of jeopardy must be removed if the accomplice is to be expected to be completely candid and truthful. If the accomplice feels that he or she has to be guarded about what is disclosed for fear of being prosecuted then it is likely that he or she may hold back some information which could be very important.

It seems to me Robert Hubbard's opinion accords with common sense. The accomplice should not be impeded from making important disclosure because of doubt or fear of additional prosecution.

In this case, Karla Homolka was shown a photograph during the cautioned statement which she was required to give under the terms of the resolution agreement. She was obviously concerned when she saw it. She was uncertain about who the other person was and she

could not identify her from the photograph. She asked if there was another picture. She was not told that a videotape existed which showed her conduct over the span of just over a minute and a half. Instead, she was told by Sergeant Gillies that he would like to wait until he got some better quality photographs. The matter was left there.

The police investigation is outside my mandate and there is probably a valid explanation for the approach taken by the police. They had the videotape segment itself. When Karla Homolka had trouble identifying the person from a photograph of one frame of the videotape, I wonder why she was not shown the whole segment or, at least, more than one photograph of one frame.

That interview took place before she was sentenced. If she had been shown the videotape segment or, at least, more pictures as she requested, who can say whether her memory might not have been triggered sooner. Then the disclosure she made on October 6, 1993, December 6, 1993 and February 2, 1994 might have taken place before she was sentenced. If the August 10, 1991 assault on Jane Doe had been disclosed before Karla Homolka was sentenced, it would almost certainly have been taken into account in her sentence, as the other Jane Doe matter had been.

It is apparent from Karla Homolka's letter to George Walker on October 6, 1993 that her memory was triggered by the photograph, that she could not identify it and that she was worried that perhaps it was her with Jane Doe. She was also worried that she might get charged with that offence. This worry is exactly the kind of concern that, according to Robert Hubbard, should be eliminated by the understanding that so long as the facts are truthfully disclosed, then no charges will be laid. It is also apparent that Karla Homolka considered herself under a continuing obligation to disclose all that she remembered about her criminal activities with Paul Bernardo.

Part of the resolution agreement provides that, while in custody, Karla Homolka will "continue to fully assist the authorities". I think that continuing to assist the authorities would include an obligation to disclose information about any activities she remembered involving Paul Bernardo at any time up until his trial. It seems to me that it would do gross damage to the spirit of the resolution agreement if the Crown called upon Karla Homolka to disclose criminal activities as her part of the resolution agreement and then prosecuted her when, in fulfilling that duty, she incriminated herself.

Moreover, I am convinced, as mentioned above, that prior to September 22, 1994, the Crown must have interpreted her disclosure as being protected by the resolution agreement. The record reveals

that the Crown intended to use her disclosure to support charges against Paul Bernardo for sexually assaulting Jane Doe and to call Karla Homolka as its witness in proving those charges. That intention would be entirely consistent with an interpretation that the August 10, 1991 assault was covered by the resolution agreement.

On April 8, 1994, Mary Hall prepared a memo to her Regional Director, Jerome Wiley, in support of an application for a preferred indictment against Paul Bernardo on the sexual assault charges which she was prosecuting. That memo included a section dealing with Jane Doe. Two separate charges were contemplated. One charge involved the long term sexual activity which took place between Jane Doe and Paul Bernardo. Mary Hall was of the opinion that Jane Doe's consent had not been given voluntarily and that a charge against Paul Bernardo respecting that activity was warranted. The other charge involved the August 10, 1991 assault disclosed by Karla Homolka. Mary Hall described the offence by saying that Karla Homolka had confirmed that Paul Bernardo engaged in sexual intercourse with Jane Doe, and she distinguished that activity from the oral sex which was the basis of the other charge against him. She referred to the sexual intercourse which Paul Bernardo had with Jane Doe while she was drugged. She said that he did not complete the sexual act because Jane Doe stopped breathing. She described Karla Homolka as being a witness to "a very serious sexual assault" upon Jane Doe.

In my view, the recital of those facts would make Karla Homolka more than merely a witness; she would be a party to the sexual assault because she complied with Paul Bernardo's demand that she drug Jane Doe to enable him to sexually assault her. If Karla Homolka's disclosure had not been made pursuant to the resolution agreement, or its spirit, then it would have been open to the Crown to charge her with that assault. Of course, if she had been jointly charged with Paul Bernardo as a party to that offence, the Crown would have had no way of proving the offence against him because, as a co-accused, she would not have been a compellable witness to testify against him. Nor would her description of the events to the police be admissible against Paul Bernardo.

Karla Homolka was not charged with that sexual assault against Jane Doe and there is nothing in Mary Hall's memo or others on the subject which even hint that the Crown was contemplating charging her. As indicated earlier, the memo shows that the Crown intended to use Karla Homolka's testimony against Paul Bernardo on the August 10, 1991 assault. There is nothing wrong with that. However, it seems consistent with only one conclusion: namely, that the Crown thought the resolution agreement expressly or by necessary implication protected Karla Homolka from prosecution for offences which she disclosed even after her sentencing provided she would co-operate with the Crown by testifying against Paul Bernardo. Paul Bernardo was charged with the August 10, 1991

assault. Karla Homolka was not. That fact confirms my opinion that the Crown thought the resolution agreement protected Karla Homolka from prosecution for it.

In my view, Karla Homolka's disclosure respecting the August 10, 1991 assault was made because she intended to comply with the terms of the resolution agreement. The Crown accepted her disclosure in circumstances where it must have agreed that the disclosure fulfilled either the letter or the spirit of the resolution agreement. In those circumstances, charging Karla Homolka with the August 10, 1991 assault would be simply untenable.

The June 7, 1991 assault raises a far more difficult problem because the evidence which would support a charge for that offence does not depend at all on disclosure made by Karla Homolka. While a small segment of videotape did provide some evidence which could have supported a charge against her before September 22, 1994, no serious thought appears to have been given to charging her before then. I think that the reasons for that are obvious. The Crown and the police were concentrating their energies upon the cases outstanding against Paul Bernardo and a prosecution against Karla Homolka would have distracted their energy and resources from those cases. At the time, both the Crown and the police were dealing with a myriad of issues involving disclosure in the cases against Paul Bernardo. Pre-jury selection motions were being argued in the murder trial. Moreover, any such charge would affect the

credibility of Karla Homolka, whose evidence at that time did not have a great deal of independent support. Probably the most important factor was that the short videotape did not fully reveal how very serious the assault that night had been.

As an aside, it is interesting to speculate why the short extract of videotape was in Paul Bernardo's briefcase where it could easily be found. When the videotapes which were handed over to the police on September 22, 1994 were examined, it was found that the small segment had been copied from a much longer section of videotape which showed the sexual assault on Jane Doe in much greater detail and showed the respective parts played by both Paul Bernardo and Karla Homolka. The small segment shows only Karla Homolka and the victim is in a position which does not readily disclose her identity. The most commonly offered explanation is that Paul Bernardo copied this segment onto a separate tape to use it to discredit Karla Homolka in the event that she instituted court proceedings against him or as a threat of exposure in the event that she thought of leaving him. However, the mystery remains unsolved.

The recovery of the videotapes on September 22, 1994 dramatically changed the case against Paul Bernardo. The Crown no longer had to rely essentially on the evidence of Karla Homolka to prove that both Leslie Mahaffy and Kristen French had been taken to 57 Bayview Drive. The Crown no longer had to rely upon Karla

Homolka's evidence to prove that Paul Bernardo sexually assaulted each of them. The Crown no longer had to rely upon Karla Homolka's evidence to prove that Paul Bernardo unlawfully confined both of them. The case for the Crown was immeasurably improved by those videotapes.

In addition to graphically depicting the outrages committed against Leslie Mahaffy, Kristen French and Tammy Homolka, one of the videotapes showed that on the night of June 7, 1991 Jane Doe had been drugged and anaesthetized. It showed Karla Homolka applying what was obviously Halothane to the face of a prostrate Jane Doe. It showed Paul Bernardo raping Jane Doe. It showed Karla Homolka committing sexual assaults upon the unconscious Jane Doe.

The June 7, 1991 assault was a very serious one. It was similar to the one that they had both perpetrated on Tammy Homolka less than six months previously and which had resulted in her death. The videotape itself showed that Karla Homolka was a party to the offence of aggravated sexual assault under Section 273 of the *Criminal Code* and that she committed the offence of administering a stupefying substance under Section 212(1)(i). Since the offence of aggravated assault subsumes the offence of administering a stupefying substance, no reference to the latter charge was made in the advice given to the police nor will I refer

to it further in this report. For ease of reference, I refer in a compendious way to the whole incident as the June 7, 1991 assault.

Until I heard a powerful argument to the contrary made by George Walker, I was tentatively of the view that the June 7, 1991 assault was not covered by the May 14, 1993 resolution agreement. Briefly stated, his argument was that the intention of the parties, as expressed in both the letter and the spirit of the resolution agreement, liberally interpreted in favour of the accomplice, was that so long as Karla Homolka gave a full, complete and truthful account of her knowledge and/or involvement in the deaths of Leslie Mahaffy and Kristen French, the Scarborough rapes, the Henley Island rape, the death of Tammy Homolka and "any other criminal activity she has participated in or has knowledge of", the total sentence for all crimes in which she participated with Paul Bernardo would be limited to twelve years. It was part of the argument that although she never disclosed the substance of the June 7, 1991 assault, she was not untruthful in failing to do so because she has a genuine loss of memory for that event. As I will show later, there is substantial evidence in support of that factual contention.

I have concluded that in this report I should not attempt to resolve the issue of whether the June 7, 1991 assault is covered by the resolution agreement. I do not know what action will be taken by the Crown following the delivery of this report. If a

prosecution should be launched, that argument will be raised in answer to the charge. In those circumstances, any comment which I might now make could later be seen as pre-judging an issue which should only be resolved by a court after hearing full evidence and argument upon it. Therefore, I will not express any opinion about George Walker's argument, except to say that it is an argument which would warrant serious consideration at the appropriate time. For the purposes of this report, I intend to answer the second term of reference upon the assumption, without deciding it, that the resolution agreement of May 14, 1993 would not prevent a prosecution of Karla Homolka for the June 7, 1991 assault.

The resolution agreement, by its express terms, provides no protection from prosecution for perjury. Karla Homolka's failure to disclose her complicity in the June 7, 1991 assault raises the question of whether she committed perjury when she failed to do so. Many of her statements to the police were actually interviews conducted while she was under oath. She was cross-examined at length by defence counsel during the spring and summer of 1994. The cross-examinations were conducted under oath. It is not necessary to analyze in any detail the questions which she was asked on any of those occasions. It will suffice to say that she was asked many questions which called for disclosure of the circumstances of the June 7, 1991 assault. Her failure to do so, if she remembered them, would amount to a false statement.

The offence of perjury is defined in Section 131 of the *Criminal Code*. There are a number of essential elements of the offence, all of which must be proved beyond a reasonable doubt by the Crown before a prosecution for perjury could succeed. Broadly speaking, those elements are:

- (1) the making of a false statement under oath;
- (2) the person who made the statement knew that it was false;
and
- (3) the person made the statement with the intention of misleading.

The police conducted an extensive investigation into the June 7, 1991 assault and into whether Karla Homolka committed perjury when she failed to disclose it or her complicity in it on the occasions when she spoke under oath. Inspector Bevan, as head of the Green Ribbon Task Force, personally conducted that investigation. At the end of it, he had no difficulty finding that Karla Homolka had made false statements in the sense that she failed to disclose the June 7, 1991 assault. Nevertheless, he expressed his conclusion on the perjury issue in a letter which he wrote to the Management Committee in April of 1995 in the following words:

...after investigating this issue and examining medical reports I conclude that there is insufficient evidence to support such a charge [i.e., perjury].

It is not part of my mandate to review the police investigations in this case and I want to be very careful not to trespass upon the mandate of Mr. Justice Archie Campbell who is reviewing the investigations by the police. Nevertheless, I have read Karla Homolka's testimony at trial and her interviews with the police. I have also reviewed the medical reports. Having done so, I have arrived at exactly the same conclusion as did Inspector Bevan. I think I should develop the reasons why I have arrived at that conclusion.

On February 20, 1995, at the Prison for Women in Kingston, the police confronted Karla Homolka with the videotape showing the June 7, 1991 assault. She said that she simply could not remember the event and, if she had, then she would have disclosed it. She said, and it is true that she had consistently maintained it, that she always thought the videotapes were still in existence. She said that if she knew about the June 7, 1991 assault then she would have realized that the authorities might one day find the videotapes and learn of the assault. She said:

...so why would I not tell the truth? And especially, I mean I have been honest and forthcoming about everything. Why would I not tell the truth about this? It doesn't make any sense to me.

She was shown the videotape of the June 7, 1991 assault when she testified at the trial of Paul Bernardo. She acknowledged that

it showed her participation in the June 7, 1991 assault. However, she said that she still did not remember it. She attempted to explain or rationalize why she did not remember the event. She said that she had no reason to deliberately conceal her conduct with Jane Doe. She said that she had no reason to refrain from telling the police because she had co-operated with them from the beginning. She then said:

I had never believed that the videotapes were destroyed. I believed the police were in possession of the videotapes when I was originally questioned in May of 1993. I have...I have admitted my involvement in things that are far more incriminating to myself than this.

I pause to note that in her May 1993 interviews Karla Homolka indicated that she thought some videotapes had been recovered by the police during their search of 57 Bayview Drive and were in their possession. There is confirmation for her belief in the fact that, on May 16, 1993, when Sergeant Gillies showed her the photograph, he told that it was "a photograph taken from a videotape".

Karla Homolka's common sense contention that there was no reason for her to fail to disclose this event among all her other crimes, if she had remembered it, is solidly supported by medical evidence. The medical evidence in support of her claim to lack memory of the June 7, 1991 assault is simply overwhelming.

She has been consistently diagnosed as a battered or abused spouse suffering from post traumatic stress disorder. I have previously mentioned the opinions of Drs. Arndt, Malcolm and Long. While in prison, she has been under the care of a consulting psychiatrist practising in Kingston, Dr. Roy Brown. In addition, the police had her assessed by two psychiatrists and two psychologists of their choice. The two psychiatrists were Dr. Stephen J. Hucker, who is Professor and Chairman of the Division of Forensic and Correctional Psychiatry at Queen's University in Kingston, and Dr. Angus McDonald, who is Assistant Professor of Psychiatry at the University of Toronto. The two psychologists were Dr. Peter G. Jaffe, who is Executive Director of the Family Court Clinic in London, and Dr. Chris Hatcher who is Clinical Professor of Psychology at the University of California at San Francisco.

It will be recalled that Drs. Arndt, Malcolm and Long all examined and assessed Karla Homolka in March and April of 1993, long before the issue of her failure to disclose the June 7, 1991 assault ever arose and before doctors were asked to comment on her memory loss. Each one of them noted in their reports that Karla Homolka had memory problems. Dr. Arndt noted that, in some respects, her memory was not particularly good. Dr. Malcolm also noted a history of some memory loss which he thought could be attributed to "emotional anaesthesia". Dr. Long reported that psychological testing showed evidence of impaired memory function.

Dr. Brown, who is Karla Homolka's treating psychiatrist in Kingston, noted in his initial diagnosis that Karla Homolka was experiencing dysthymia and post traumatic stress disorder. This diagnosis is consistent with that made by the doctors who saw her earlier. He was later asked to comment upon her claim of lack of memory regarding the Jane Doe incident. He explained that he had available to him the reports of other doctors and he had conducted many interviews with Karla Homolka. He said: "in my professional opinion I believe her to be entirely truthful in her accounts of the incident involving Jane Doe". He later expanded upon that opinion. I draw to the reader's attention that Dr. Brown refers to "Ms. Teale". In so doing, he is in fact referring to Karla Homolka:

On admission to the Prison for Women in 1993, Ms. Teale had been diagnosed by two consultant psychiatrists as suffering from a severe Post-Traumatic Stress Disorder resulting from what is commonly known as "Wife Battering".

The Diagnostic and Statistical Manual of Mental Disorders defines this as the development of characteristic symptoms following a psychologically traumatic event that is generally outside the range of usual human experience. Stressors producing this disorder include various natural disasters, accidental man-made disasters or deliberate man-made disasters (bombings, torture, death camps). The disorder is apparently more severe and longer lasting when the stressor is of human design. Among the typical symptoms are depression, "psychic numbing" or a loss of feeling

and interest in social activities and impaired memory and difficulty in concentrating.

Frequently, there is a concomitant physical component to the trauma which may even involve direct damage to the central nervous system (e.g. head trauma).

From my own examination of Ms. Teale, I concurred with the diagnosis of her previous therapists, and continued the treatment programme that they had initiated, including the gradual reduction of the fairly heavy amounts of medication that she had obviously required at the earlier stages of treatment.

The range of traumas to which she had been subjected for a period of five years at the hands of Mr. Bernardo was quite extensive, and her own accounts seemed to be well corroborated by statements from family, friends and examining physicians. These traumas included physical assaults including blows to the head using foreign objects, sexual abuse including many personal indignities, a wide range of psychological abuse including social isolation, the deliberate removal of any feeling of self esteem and self assertiveness and the enforced misuse of alcohol and mind altering drugs.

Ms. Teale demonstrated quite clearly all the symptoms of a severe and chronic Post-Traumatic Stress Disorder and included some memory impairment or amnesia. This memory loss could be a result of various factors, either singly, or, more probably in combination, and these factors include 1. Psychological repression of events that are too painful for the individual to bear. This is a completely unconscious defense mechanism over which the individual has no control. 2. Damage due to head injury, which may be temporary or permanent. 3. The misuse or abuse of alcohol and/or drugs.

Dr. Brown's conclusion reads as follows:

In conclusion, I am of the opinion that Karla has been consistently truthful in her recollections of the past events in this case. She continues to show a natural concern about the areas for which she has amnesia and is aware that predictions regarding complete or partial recovery are not possible. She continues to have no memory for her own involvement with Jane Doe, and this is consistent with her participation having occurred against her will and under the empowered direction of her ex-husband.

Dr. Hucker reviewed a great deal of material and interviewed Karla Homolka for ten hours. He concurred in the opinions expressed by the several other experts who had examined and treated her that she was suffering from post traumatic stress disorder, resulting from spousal abuse. The memory loss which she reported was, in his opinion, consistent with that diagnosis.

Dr. Hatcher examined Karla Homolka for six hours, conducted a battery of psychological tests, reviewed voluminous material and conducted interviews with a substantial number of people who could provide him with information about her life. He diagnosed her as demonstrating a high degree of disturbance consistent with an abused woman suffering from post traumatic stress disorder.

Dr. McDonald acknowledged that Drs. Arndt, Long, Malcolm and Hatcher had all diagnosed Karla Homolka as experiencing post traumatic stress disorder and/or representing a case of battered wife syndrome. He expected that there was some truth in those labels. He also said that two other diagnoses appeared to apply. They were alcohol abuse and sexual deviation, most likely of a sado-masochistic type. He briefly reviewed the article "Compliant Victims of Sexual Sadists" to which I made reference earlier and which I will discuss in detail later in this report. He said that "the number of parallels with this case is so striking as to be worthy of particular attention".

In the material provided for consideration in this inquiry is a forty-five page document prepared by the police entitled "Abuse Timeline". The Abuse Timeline is a chronological list of the physical, psychological and sexual abuse of Karla Homolka by Paul Bernardo. It categorizes the abuse as physical abuse, psychological abuse including evidence of domination, and sexual abuse. It describes in detail the particulars of the abuse and gives the reference to this evidence in the Crown material. I have not included it as an appendix for two reasons. The first reason is that there are a number of references to persons whose identities are protected. The second reason is simply its length. However, if further study of the parallels between this case and those set out in the paper entitled "Compliant Victims of the

Sexual Sadist" are explored, reference can be made to that document.

Dr. Jaffe assessed Karla Homolka from August of 1994 to December of 1994. He had two interviews with her which totalled ten hours. He ordered psychological testing and reviewed extensive material provided to him from the police investigation. He reviewed the reports of other experts who had examined and treated her. He spoke with members of the Homolka family. In the course of his assessment, he consulted with three persons whom he described as leading experts in North America on battered women's syndrome. They were Dr. Angela Browne, Dr. Lenore Walker and Dr. Charles Patrick Ewing. The works of Dr. Walker and Dr. Ewing were referred to by Madam Justice Wilson when she delivered the judgment of the Supreme Court of Canada in *Lavallee v. The Queen, supra*. Dr. Jaffe's ultimate conclusion after his assessment is:

In our opinion, Ms. Homolka exhibits all the signs and symptoms of a young woman who has been extremely traumatized by an abusive relationship. She reports a clear and consistent history of emotional, physical, and sexual violence that trapped her in an abusive relationship. In our opinion, she fits all the criteria for the battered woman's syndrome. In our views, she was groomed, by Mr. Bernardo, to become involved in increasingly bizarre and dangerous behaviour that was harmful to herself and others. Mr. Bernardo involved her in three deaths that gradually increased her role and participation. According to Ms. Homolka, Mr. Bernardo's

next instruction was for her to kidnap and kill someone by herself. If her family hadn't dragged her out of her house in January 1993, it is likely, she or someone else may have been killed.

Dr. Jaffe was later asked to give his opinion about Karla Homolka's failure to disclose the assault on Jane Doe. He said that the failure to disclose was not unusual for a traumatized person. He said that people who have been traumatized may remember some events in great detail, parts of others and nothing of some. He was not surprised that she did not remember the June 7, 1991 assault on Jane Doe. He said that in other cases of abuse he has noticed a process of "incremental" disclosure and that he did not find it unusual that Karla Homolka could not recall everything. He said that he would not be surprised if she remembered other things as time went by.

I have reviewed this expert evidence at some length because it bears directly upon the second and third elements of the offence of perjury. Those elements, as I mentioned above, are knowledge that one's statement is false and the intention to mislead. Both of those requirements are dependent upon the memory of the person. If Karla Homolka honestly did not remember the event, it cannot be said that she knew that she was making a false statement when she did not disclose the assault and her part in it. The absence of memory negates the intention to mislead. Genuine amnesia is inconsistent with the offence of perjury.

It cannot be said that Karla Homolka committed perjury by failing to disclose the June 7, 1991 assault if she did not remember it. She said that she did not remember it and she has given a common sense response that there was no reason for her to deliberately fail to disclose it, having regard to all of the other crimes which she did disclose. The expert evidence overwhelmingly supports her contention that she does not remember it.

It would be essential, to a successful perjury prosecution against her, for the Crown to prove positively that she did remember the June 7, 1991 assault but did not disclose it. When Inspector Bevan reached his conclusion that there was insufficient evidence to support a perjury charge, he was simply saying that the Crown could not disprove her assertion that she did not remember the incident. It is my respectful view, on the evidence in this case, that his conclusion is unassailable. The Crown would have had virtually no chance of succeeding on a perjury prosecution against Karla Homolka.

In conclusion, I can add this about a possible perjury charge. On February 6, 1996, David Humphrey and I interviewed Karla Homolka at the Prison for Women in Kingston. She told us that she still has no recollection of the June 7, 1991 assault and would have disclosed it if she had remembered it. Nothing has changed since Inspector Bevan decided that a perjury charge could not be

sustained against Karla Homolka. That decision remains as valid today as when he made it a little less than a year ago.

As I mentioned in my review of the facts, while the videotapes were recovered on September 22, 1994, they could not be reviewed in detail until September 28, 1994. Once the videotapes had been analyzed and Karla Homolka's complicity in the June 7, 1991 assault was clearly demonstrated, a difference of opinion developed between the prosecutors in the murder cases and the prosecutors in the sexual assault cases.

As noted earlier in this report, Mary Hall, as Crown Attorney in Scarborough, was in charge of the prosecution of all of the sexual assaults. She had earlier obtained preferred indictments against Paul Bernardo which included charges related to Jane Doe. The murder charges and other offences relating to Leslie Mahaffy and Kristen French were being prosecuted by Raymond Houlahan, the Crown Attorney at St. Catharines. Mary Hall thought that the videotapes clearly demonstrated that Karla Homolka participated in a serious assault on Jane Doe and that she should be prosecuted for it. Because of the videotapes, she believed that the case was so clear that it would not be difficult to prove. It was later ascertained that Chief Constable Grant Waddell of the Niagara Police shared Mary Hall's view that Karla Homolka should be charged.

On the contrary, Raymond Houlahan and his Assistant, Gregory Barnett, were of the opinion that charging Karla Homolka with that crime would seriously affect her credibility as the essential witness in the murder cases. For this reason, they thought that she should not be charged.

It seems to me that there was substantial merit in both positions. I think that the opinion of a prosecutor as experienced and competent as Mary Hall, shared by Chief Waddell, is entitled to great weight. On the other hand, the most serious offences in all of the cases were the first degree murder charges against Paul Bernardo. Two very experienced trial prosecutors were strongly of the opinion that their case for first degree murder against Paul Bernardo might be prejudiced if Karla Homolka were charged with the Jane Doe offence. The jury would learn through cross-examination by the defence, unless disclosed earlier by the Crown, that the prosecution's crucial, all important witness had recently been charged with a serious offence. The effect upon her credibility might be very serious indeed. Because there was a disagreement between the two prosecuting teams, neither was able to advise the police on whether or not charges should be laid. That decision would have to be taken by the Management Committee..

The Management Committee made its decision on May 18, 1995. It has been suggested to me that the Management Committee should have made its decision earlier than it did. That criticism has to

be analyzed in the light of a certain principle of law which ultimately played a substantial part in the Management Committee's decision. It also has to be viewed in the light of the stage to which the trial had progressed when the videotapes were obtained by the authorities.

It has been consistently held by Canadian courts that, before an accomplice testifies against someone with whom the accomplice committed a crime, the charge against the accomplice should have been completely dealt with and the sentence imposed. That is in contrast with the practice said to be followed in some of the courts in the United States where the charge against the accomplice is not disposed of before he or she testifies so that the threat of serious consequences hangs over the witness' head if he or she does not perform as expected by the prosecutor. That practice has been roundly condemned in many Canadian courts. The danger inherent in the practice is well explained by Mr. Justice Rothman, giving the judgment of the Court of Appeal of Quebec, in *R. v. Heng* (1995), 68 Q.A.C. 309 at page 314:

In deferring the sentence of a witness until after he or she has given evidence in a case of this kind, there is always the danger that this will be perceived by the witness as a precaution to assure that he does give evidence as he has agreed to do. *But there is also a more serious danger that this will be perceived by the witness and others as an inducement to assure not only*

that the evidence be given but that the evidence be favourable to the prosecution. (emphasis added)

While he was in dissent on other grounds, Mr. Justice Kerwin in *The King v. Canning* (1937), 68 C.C.C. 321 (S.C.C.) made the following comment upon the practice of calling an accomplice to testify when the accomplice has not been sentenced for his part in the crime (at page 323): "this is a practice that should not be tolerated".

In *R. v. Ertel* (1987), 35 C.C.C. (3d) 398 (Ont. C.A.) Mr. Justice Lacourcière, speaking for the Court of Appeal, observed that there was an inherent danger in calling an accomplice to testify before the charge against him had been dealt with. He approved of the decision of a trial judge who had "properly deprecated the 'distasteful procedure'" (at page 410).

There was a time in England when the calling of an accomplice as a witness before the case against him or her had been completely disposed of would result in the quashing of any resulting conviction. See *R. v. Pipe* (1966), 51 Cr. App. R. 17 (C.A.). That, however, has never been the law in Canada. See the judgment of Mr. Justice McIntyre in *R. v. Williams* (1974), 21 C.C.C. (2d) 1 (C.M.A.C.) where, after discussing *R. v. Pipe, supra*, he said (at page 11):

It was argued that this principle should be applied here in that it was a correct statement of the law in Canada. I must disagree. While Lord Parker seems in the above quoted passage to convert a well recognized rule of practice into a firm rule of law I cannot find that such a step has been taken in Canada. While the practice of calling an accomplice against whom unresolved legal proceedings are outstanding *is to be frowned upon and even condemned* involving as it does grave dangers in that a witness may be provided with a strong motive to colour his evidence or give false evidence I cannot say that such evidence is inadmissible nor that its reception will void a conviction. The effect of the Canadian decisions is to indicate that while such a step may affect the weight of evidence offered in this fashion it does not go to the question of admissibility. (emphasis added)

As that judgment demonstrates, Canadian courts have held that the distastefulness of the procedure goes to the weight of the evidence, i.e., the credibility of the witness, rather than to its admissibility. Canadian appellate courts, however, have required that the tribunal of fact, whether a judge alone or a jury, should be aware of and fully alive to the dangers inherent in the testimony of such a witness. The jury is made aware of the dangers inherent in relying upon the credibility of an accomplice who has not been sentenced by a strong instruction to that effect given by the trial judge. See *R. v. Ertel, supra*; *R. v. Heng, supra*; *R. v. Caulfield* (1972), 10 C.C.C. 2d 539 (Alta. C.A.) at page 540; and *R. v. Williams, supra*.

If the Crown had decided to lay a charge against Karla Homolka, the only way it could have avoided the risk of an adverse instruction regarding her credibility when she testified against Paul Bernardo would be if the charge against her had been fully dealt with and her sentence imposed before she testified. This is where the timing factor becomes crucial. With all the matters which the Crown and the police had to deal with at that time respecting the ongoing trial, the investigations made necessary by the videotapes themselves and the constant demands being made upon them and their resources, I think it would have been very difficult for the police to have been in a position to lay a charge against Karla Homolka for several weeks after the videotapes came to light. It would hardly seem reasonably possible to expect the appropriate charge to have been investigated and laid until, at the earliest, some time in November 1994.

The trial had, by then, been held up for a substantial period of time by the change of counsel. However, Chief Justice LeSage appears to have been pressing for it to proceed because, in November, he fixed May 1, 1995 as the date when the jury selection process would begin. The fixing of that date left approximately five months for the laying of a charge against Karla Homolka in connection with the June 7, 1991 assault, the prosecution of that charge through to conviction and the imposition of sentence. This time frame is approximate because Karla Homolka would not have been called as a witness on May 1, 1995 or shortly thereafter.

We now know exactly how much time there was because she began testifying on June 19, 1995. Assuming a charge had been laid in November 1994, the Crown would have had something in the order of seven months to get the charge against her completely dealt with. The congestion in the trial courts in Ontario is such that, in the absence of a plea of guilty, it would have been well nigh impossible to have held a preliminary hearing and a trial within the time available to do so.

I asked George Walker and Karla Homolka what position they would have taken had a charge been laid. They said that under no circumstances would Karla Homolka have pleaded guilty, nor would she have entered into any further resolution discussions with the Crown. It is the opinion of Karla Homolka, and the advice of her counsel, that any offence arising out of her participation in crimes with Paul Bernardo was covered by both the letter and spirit of the original resolution agreement. If she were charged, not only would the Crown be acting in violation of that agreement but, in her view, the Crown would have been treating her unfairly and would not be entitled to her further co-operation.

To assess the length of time that any proceedings against her would have taken, I asked George Walker what the nature of the defence would have been. He told me that there would have been two separate lines of defence. The first line of defence would have been that a prosecution for an assault upon Jane Doe was an abuse

of process because it violates the letter and spirit of the resolution agreement. I mentioned earlier the position which George Walker took on that issue and I need say no more about it.

The second line of defence would recognize that the defence of compulsion provided for in Section 17 of the *Criminal Code* is inapplicable because charges of sexual assault and aggravated sexual assault are specifically exempted from the benefit of that section. However, because there is substantial evidence that Karla Homolka was a battered spouse to such an extent that she was completely under the control and domination of Paul Bernardo, it would be contended that her acts were not voluntary ones controlled by her own mind.

In such a case, her acts would not be subject to criminal liability if the elements of the common law defence of necessity could be established. That defence was examined by the Supreme Court of Canada in *Perka v. The Queen* (1984), 14 C.C.C. (3d) 385. The criterion of the defence is the moral involuntariness of the wrongful act. The defence contains a number of essential ingredients and is available only if the accused acted under direct and immediate peril with no reasonable opportunity for an alternative course of action not involving a breach of the law. Moreover, the harm inflicted must be less than the harm sought to be avoided. The defence is not an easy one to establish.

It is not for me to say whether it would be a viable defence in this case. But if it were held to be, there is evidence which could support Karla Homolka's claim that her actions toward Jane Doe were morally involuntary. In this report, I have not analyzed in detail the evidence of Karla Homolka with respect to the abuse suffered by her at the hands of Paul Bernardo nor have I examined in detail the extent to which she claims that she was virtually under his complete control and domination. It will suffice to say that her testimony in that respect was substantial.

It is apparent from comments made after the trial by some of the jurors in the Paul Bernardo trial that the jury was divided on the issue of whether she was a battered spouse and whether she was under his control and domination. One juror, a man, has been quoted in the news media as saying that he did not believe the Crown's assertion that Karla Homolka was a battered woman and that she was emotionally battered into participating in the killings. Two other jurors announced that they were convinced that Karla Homolka was, in fact, a battered woman. One of them is quoted as saying that the evidence was there "in huge, huge quantities". Another juror, a man, wrote to the Homolka family after the trial. I quote one sentence from his letter: "I personally believe she was manipulated, controlled and battered."

The expert evidence which would have been available to the defence to prove that Karla Homolka was a battered woman was

substantial. In addition to those doctors who treated her, Drs. Arndt, Malcolm, Long and Brown, the defence would have had available the evidence of those doctors whom the Crown asked to assess her, namely, Drs. Hucker, McDonald, Hatcher and Jaffe.

There is another piece of relevant evidence which the Crown has either already provided to Karla Homolka's counsel or would have provided if a charge had been laid. It is the paper to which I have already referred, entitled "Compliant Victims of the Sexual Sadist". The paper was written by Robert R. Hazelwood, M.A., Janet I. Warren, D.S.W. and Park E. Dietz, M.D., M.P.H., Ph.D. and is published in *Australian Family Physician*, Vol. 22, No. 4, April 1993. Robert Hazelwood is a Supervisory Special Agent at the Federal Bureau of Investigation's Behavioral Science Services Unit at Quantico, Virginia. Janet Warren is Associate Professor in the Department of Behavioral Medicine and Psychiatry at the University of Virginia. Park Dietz is a forensic psychiatrist and Associate Professor in the Department of Psychiatry at the University of California, Los Angeles. The abstract of their paper reads as follows:

This is a descriptive summary of the experiences of a sample of women who have been consensually involved with criminal sexual sadists. The paper details the physical, sexual and psychological abuse to which the women were subject as well as the process by which they were transformed from independent, competent women to the

compliant appendages of their criminally active partners. Similarities in the sexual sadist's criminal and consensual sexual activities as they reflect a specific paraphilic preference are discussed.

I will not discuss the paper in detail but I attach a copy of it as an appendix to this report. The paper examines the case histories of seven women and describes the physical, sexual, and psychological abuse to which the women were subjected. As noted by Dr. McDonald, after he read the paper, the number of parallels between those cases and that of Karla Homolka is striking. The authors point out that when they met the sexual sadists, the women were functioning competently. They note that, in the majority of cases, the sadists took a competent woman "and transformed her into a sexually and psychologically compliant slave".

I have not made reference to this aspect of a potential defence available to Karla Homolka to express any opinion about its legal or factual validity. I have done so only to show that a charge would have resulted in a trial which would have been extremely complicated, both legally and factually, and most certainly would have been long, difficult and with an uncertain outcome. I am convinced that it would have been impossible to have completed these proceedings by the time Karla Homolka was required to testify at Paul Bernardo's trial.

I cannot speak for Chief Justice LeSage but I was a trial judge for nineteen years and presided at a great many murder trials. It is with that experience that I can venture, with some degree of confidence, that it is quite unlikely that he would have agreed to further postpone the murder trial which had started on May 4, 1994 to allow a sexual assault charge, no matter how serious, to be tried and completed.

It is my view that, by the time the videotapes came into the possession of the authorities, it was already too late to charge Karla Homolka with an offence arising out of the June 7, 1991 assault on Jane Doe and have any hope whatsoever of having that charge completely disposed of before she would be required to testify against Paul Bernardo. Thus, there was no way, if Karla Homolka were charged, that the Crown could have avoided the serious risk of having an adverse instruction made respecting her credibility because she was testifying as a charged accomplice whose case had not been completely dealt with. Any suggestion that the Management Committee delayed too long in making its decision is, in my view, totally irrelevant. Even if the decision had been taken within a few weeks of the recovery of the videotapes, the dilemma which they faced would have been exactly the same as when they made the decision on May 18, 1995. If they charged Karla Homolka, there was a serious risk that the unfinished charge against her would attract an adverse instruction which could have seriously damaged her credibility as a witness.

Further, it is worth noting that in late March and early April of 1995, just a few weeks before the jury selection process began, the defence was considering the laying of a private charge against Karla Homolka for the Jane Doe offence. The defence asked the solicitors for Jane Doe whether she would be laying charges against Karla Homolka. The defence also asked Inspector Bevan when she would be charged. Obviously the defence was anxious that a charge be laid because it thought there would be a substantial tactical advantage for it if a charge were laid.

During the autumn of 1994, both the Crown and the police considered whether charges should be laid against Karla Homolka for the offence committed against Jane Doe. As noted earlier, Mary Hall thought that charges should be laid and both Raymond Houlahan and Gregory Barnett thought that charges should not be laid. Inspector Bevan decided that the investigation of the June 7, 1991 assault required a cautioned interview of Karla Homolka. That interview could not be undertaken until the transcript of the audio portions of the videotapes was prepared and available. As of December 2, 1994, he tentatively scheduled the interview for the week beginning January 30, 1995. Eventually, the interview could not be held until late February. On December 2, 1994, he asked Raymond Houlahan whether the Crown was considering charging Karla Homolka. That decision could not be made by Raymond Houlahan but could only be taken by the Management Committee. On February 8, 1995, George Walker was advised that the police might be seeking

advice from the Management Committee as to whether charges should be laid against his client.

Earlier in this report, I outlined the composition of the Management Committee and briefly described the background of each of its four members. I did this to emphasize the extensive experience which each of them had in the field of criminal law. I mentioned the extensive experience of Raymond Houlahan and Gregory Barnett, the prosecutors of the murder charges, to emphasize the weight to which their opinions about trial strategy were entitled. I mentioned the extensive experience which Mary Hall had to emphasize the weight to which her opinion was entitled. There can be no suggestion that this difficult issue was debated and ultimately decided by unqualified and inexperienced persons. The decision was made by a group of individuals whose competence was unassailable and who ranked among the most knowledgeable and experienced in the Criminal Law Division.

Members of the Management Committee had discussed the issue of charging Karla Homolka with an offence arising out of the June 7, 1991 assault on an ongoing basis since shortly after the videotapes were recovered. Their initial concern was whether Karla Homolka honestly did not remember the incident or whether, in fact, she had perjured herself when she failed to disclose it. The investigation into this aspect of the issue was careful and thorough. If the Management Committee concluded that she had perjured herself, there

is no doubt that a charge of perjury would have been laid. The Management Committee came to the conclusion that Karla Homolka's amnesia was, in fact, genuine.

The next difficult issue that had to be addressed was the effect of the resolution agreement upon the propriety of laying a charge. I have already outlined the argument that the laying of any charge relating to an offence committed with Paul Bernardo would violate the letter and spirit of the resolution agreement. The Management Committee concluded that the resolution agreement was not a bar to charging Karla Homolka. That left the final difficult decision to be made: whether Karla Homolka should be charged with an offence arising out of the June 7, 1991 assault.

There is no doubt that reasonable and probable grounds for the laying of the charge of sexual assault or aggravated sexual assault existed. Nothing more was required than to look at the videotapes to see that those grounds existed. There is no doubt that the Crown had sufficient evidence upon which to lay a charge. It is well settled, however, that, even where there is sufficient evidence to lay a charge, the Crown and the police can decline to lay the charge if, in the proper exercise of its prosecutorial discretion, the Crown decides that it is in the public interest that the charge not be laid. This principle was concisely stated in the Martin Report (at pages 74 - 75):

Once the threshold test for the sufficiency of the evidence has been met, it is, of course, necessary to ascertain whether a prosecution is, in all of the circumstances, in the public interest. In 1925, Sir John Simon, then Attorney General of England, put the principle this way in a much quoted speech in the House of Commons:

"There is no greater nonsense talked about the Attorney General's duty, than the suggestion that in all cases the Attorney General ought to decide to prosecute merely because he thinks there is what lawyers call 'a case'. It is not true, and no one who has held that office supposes it is."

Sir Hartley Shawcross, Attorney General in 1951, echoed this fundamental principle in his famous speech in the House of Commons when he stated that "it has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution...the public interest...is still the dominant consideration".

In Ontario, Attorneys General and their agents have clearly recognized this constitutional obligation to act, at all times, in the public interest when exercising prosecutorial discretion: see, for example, *Campbell v. The Attorney General of Ontario* (1987), 31 C.C.C. (3d) 289 (Ont. H.C.); aff'd 35 C.C.C. (3d) 480 (Ont. C.A.); leave to appeal to S.C.C. refused 35 C.C.C. (3d) 480 n.; I.G. Scott, "The Role of the Attorney General and the Charter of Rights" (1986-87) 29 Crim. L.O.Q. 187, at pp. 189-192.

The decision not to prosecute should be taken only after determining that it is in the public interest not to prosecute. The overriding consideration, therefore, is the public interest. So far as I know, no one has been able to define precisely or describe exactly what constitutes the public interest. The public interest is broad and comprises many diverse aspects which may vary greatly from time to time and from case to case. In the context of the public interest, the Martin Committee explained the essence of the exercise of prosecutorial discretion in the following way (at page 78):

Ultimately, the exercise of sound prosecutorial discretion brings the prosecutor's experience to bear on *all* of the circumstances of the individual case. In the words of one writer,

"There will, however, undoubtedly remain a substantial area of discretion, regulated only by a large number of competing factors that, in their cumulative impact and interaction, produce some unpredictable, case specific results. This seems to be inherent in the nature of criminal justice discretion; to the extent that we seek to achieve a variety of goals through the criminal process, while recognizing a large number of moral and social principles, we are forced to make complex judgments involving a large number of imprecise factors".

Thus, the Crown is given a discretion which, as the Martin Committee pointed out, depends upon the bringing to bear of the Crown's experience on all of the circumstances of the particular

case. It is for that reason that I stressed the great experience which the Management Committee possessed and could apply to the facts of this case. The Martin Report sets out a large number of factors which, depending upon the circumstances of an individual case, could be taken into account when deciding whether or not it is in the public interest to refrain from prosecuting a charge when there is evidence to support the laying of a charge. No one factor, nor indeed any group of factors, must necessarily be decisive in any one case. What is of utmost importance is the experience which the prosecutor brings to bear upon the weighing of the factors. As the Martin Committee observed (at page 78):

It cannot be forgotten that a prosecutor's experience will provide much unwritten guidance to any assessment of the public interest. (emphasis added)

I do not intend to list them all, but I will mention some of the factors which seem appropriate to me for consideration in this case. One factor is the gravity of the incident. Another factor is the impact upon the victim and the view of the victim as to whether charges should or should not be laid. The next factor is public confidence in the administration of justice and in the maintenance of public order. Another factor is the degree of culpability of the alleged offender in relation to another offender. The effect of a prosecution upon the public order is a factor. Another factor, suggested by the Martin Committee, is

"whether the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which he or she has already done so". The next factor is the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court. I would add another factor which I do not find mentioned in the Martin Report. It is the effect which the laying of a charge might have upon the successful prosecution of another offender.

It is apparent to me that a heavy responsibility is imposed upon those who are called upon to exercise a discretion not to charge where there is evidence in support of the charge. The appellate courts have traditionally declined to interfere with the exercise of a discretionary power provided the decision maker did not act for an oblique motive and considered the appropriate factors in the exercise of his or her discretion. In this case, there is absolutely no hint of any oblique motive on the part of any of the decision makers.

The members of the Management Committee discussed the issue among themselves and with the respective prosecutors on a number of occasions after the videotapes were recovered. It was a subject that came up when they met to deal with other issues. As a result of a written request for advice made by Inspector Bevan on April 14, 1995, the Management Committee met on April 21, 1995 to deal specifically with the issue. All members of the Management

Committee were present at the meeting. Inspector Bevan and Inspector Warr also attended. Murray Segal attended as a consultant and adviser but not as a decision maker. Although Mary Hall had resigned on February 6, 1995 as prosecutor of the sexual assault charges, her position that Karla Homolka should be charged and her reasons for that position were understood and weighed by the Management Committee.

The Management Committee still had concerns about the validity of Karla Homolka's claim of amnesia respecting the June 7, 1991 assault and asked that the doctors be re-interviewed on the subject and particularly as to whether amnesia could be a symptom of post traumatic stress disorder. It wanted to hear representations from Karla Homolka's counsel. It also wanted to obtain the views of Jane Doe and of her parents. The Management Committee then discussed a number of public interest factors. On the one hand, it considered the fact that the offence was a very serious one and that, if it were not prosecuted, there might be a perception of leniency which would affect public confidence in the administration of justice. On the other hand, it was concerned about the potentially prejudicial effect that a charge could have on the successful prosecution of Paul Bernardo for murder. It considered the fact that Karla Homolka had been and was continuing to co-operate fully with the prosecution and the police. It also considered the fact that, as a battered wife, she had acted under duress, not as a justification but as a factor to be considered in

the exercise of its discretion. The Management Committee postponed making its final decision until the further medical information which it had requested was available.

The Management Committee met to make its final decision on May 18, 1995. In the time between the two meetings, the doctors were re-interviewed. As a result of those interviews, both the police and the Management Committee were satisfied that Karla Homolka's claim of amnesia was genuine. The views of Jane Doe and her family were obtained through their solicitors. Jane Doe was ambivalent about whether charges should be laid. She apparently retained some residual feelings of affection for Karla Homolka and would have preferred to see and hear her give evidence before making up her mind. Unfortunately, as Jane Doe was to be a witness at the Paul Bernardo trial, the order excluding witnesses from the court until they testified would prevent her from doing that. The preference of Jane Doe's parents was that charges be laid but not if charges could prejudice the successful prosecution of Paul Bernardo.

The Management Committee also notified George Walker that they would hear any representations which he might wish to make at the opening of their meeting. He was given the opportunity to provide written material beforehand. He obtained an updated report from Dr. Brown and sent it to the Management Committee two weeks before its meeting.

At the outset of the Management Committee meeting on May 18, 1995, George Walker appeared and made representations on behalf of Karla Homolka. He expressed his opinion that the resolution agreement expressly or by necessary implication prevented a charge from being laid for an offence which Karla Homolka committed with Paul Bernardo. He outlined his reasons for that belief. He said that the genuineness of her amnesia was demonstrated by the medical opinions obtained by him and by the Crown. He reminded the Management Committee that his client was undeniably a battered spouse who had acted under the duress of Paul Bernardo. He stressed that for over two years Karla Homolka had co-operated fully and completely with the police and with the Crown. He said that she would have a strong feeling which, in his opinion, was justifiable, that in view of her co-operation she would be treated very unfairly by the Crown and the police if she were charged with an offence.

After hearing his representations, the Management Committee discussed the issue in detail. It took time and care in reaching its decision. Its first concern was the possibility of a perjury charge. It noted that the police had decided that there were not reasonable and probable grounds to believe that Karla Homolka had committed perjury in her various sworn statements. They noted that she did not disclose the June 7, 1991 assault in any of her sworn statements but that she did acknowledge inviting Jane Doe and another girl to 57 Bayview Drive so that Paul Bernardo could have

sex with them. They noted that the reason the police felt perjury charges could not be sustained was that they accepted that Karla Homolka suffered from true amnesia due to post traumatic stress disorder. Their conclusion was based on current psychiatric opinions from three very experienced clinicians, Drs. Jaffe, Hucker and Brown, who were unanimous in their conclusions that Karla Homolka was a severely abused and battered wife who showed a number of classic symptoms including partial memory loss. The Management Committee also noted the common sense fact that Karla Homolka freely acknowledged her role in far more serious criminal conduct and that she had no reason to lie about the sexual assault on Jane Doe if she had, in fact, recalled it. The Management Committee agreed with the opinion formed by the police that there were not grounds to lay a perjury charge.

The Management Committee then proceeded to consider whether there was evidence supporting a charge against Karla Homolka for aggravated sexual assault arising out of the June 7, 1991 assault. They noted that the videotapes clearly depict the assault and the fact that Karla Homolka played an active role in it. The Management Committee was satisfied that there were reasonable and probable grounds to lay a charge of sexual assault.

The Management Committee then considered the difficult issue of whether it was in the public interest not to lay a charge. Among the factors which the Management Committee considered in

support of laying a charge was the fact that the June 7, 1991 assault against Jane Doe was an extremely serious one. At the time, Jane Doe was a minor. Karla Homolka used a dangerous substance, Halothane, to render her unconscious. The offence was carefully planned. It was a virtual repetition of the conduct which, six months earlier, had resulted in the death of Tammy Homolka. The Management Committee considered these factors which weighed strongly in favour of laying a charge. It also carefully considered the views of Jane Doe and her parents.

The Management Committee also considered a number of factors which weighed in favour of not laying a charge. There was the virtually incontrovertible evidence that Karla Homolka was a severely battered spouse. The psychiatric reports and Karla Homolka's statements to the police showed well known hallmarks of an extremely abusive relationship. The Management Committee recognized that the defence of duress was not available as a matter of law in this case. Nevertheless, it thought that circumstances of duress were a factor which it ought to consider in deciding how to exercise its discretion. It then considered a number of factors surrounding the resolution agreement.

Shortly after the May 18, 1995 meeting, Michael Code prepared a memo of some of the factors weighing against a charge which were considered by the Management Committee. I think it germane to quote an extract from that memo. In reproducing this extract, I

have substituted the name "Jane Doe" in any place where her real name appears or where there is any indication of her true identity.

Homolka has consistently assisted the prosecution in the case against her husband Paul Bernardo. Without her assistance he could not have been charged and prosecuted and would likely have gone on to kill and rape other women. She has consistently tried her best to disclose the assault on Jane Doe to the police. She told her lawyer of her first recollections and he disclosed this letter to the police. She then told her psychiatrist of further recollections and asked him to assist her with hypnosis and sodium pentothal (which he refused to do for therapeutic reasons). She then gave a partial account to the police. This was all before the videotapes were turned over to the police last fall and before the full details of the assault were revealed. But for her genuine amnesia and but for the suppression of the videotapes by Bernardo and his former counsel, the assault on Jane Doe would unquestionably have been made part of the plea agreement with Homolka two years ago. It would have had some impact on her sentence, in my opinion, but not a significant impact. Instead of twelve years, the sentence might have been fourteen or fifteen years. The key factors on sentencing would still have been her early guilty pleas, her critical assistance to the prosecution in securing the arrest and prosecution of a more dangerous offender, her subservient role in the offences, the duress exercised on her as a battered wife, the positive psychiatric reports and the lack of any prior record or any reasonable prospect of re-offending. Judge Kovacs might well have imposed the same twelve year sentence even if the assault on Jane Doe had been part of

the plea agreement. This series of factors, namely, Homolka's significant assistance to the prosecution, the failure to include this offence in the plea agreement through no fault of her own, her genuine attempts to disclose the offence to the police and the minor impact this offence would have had on her sentence are all factors that weigh in favour of discretion...

I should point out that, when the Management Committee considered the possible effect of the sentence for the June 7, 1991 assault upon the overall sentence which Karla Homolka would receive for all of her offences, it properly took into account what is called the principle of totality. What that principle means is, that when a court considers a sentence for a particular offence, it must look at the effect which the sentence will have upon the total sentences which the offender is serving for all of her offences. The court should not simply decide what is a fit sentence for a given offence and arithmetically add it to all of the other sentences which have been imposed. The sentence must be looked at proportionately and in relation to the effect that it will have on the totality of all of the sentences.

I have had to consider the application of that principle countless times in the almost twenty-six years I spent on the Bench. It is my view that, at the very most, the principle of totality would not have permitted the total sentence imposed on

Karla Homolka to be increased by more than two years. It could have been less.

The Committee then considered the impact a charge against Karla Homolka could have on the prosecution of Paul Bernardo. It was extremely concerned about this factor. It recognized that if a charge was to be laid, the attendant publicity might play into the hands of Paul Bernardo's defence. It recognized that by charging her and calling her as a witness while the charges against her were outstanding, it would be deliberately engaging in a practice which the courts have held to be "frowned upon and even condemned".

I pause to add that the Crown would be ill advised to deliberately take a course which a judge of the Supreme Court of Canada has said "should not be tolerated".

The Management Committee recognized the dangers described by Mr. Justice Rothman in *R. v. Heng, supra*, which are inherent in the practice. It took into account the strong likelihood that the trial judge would instruct the jury that the unresolved charge was a factor which seriously undermined Karla Homolka's credibility. This was a prescient concern because, as I indicated earlier, and, as John Rosen put it to the jury, the Crown's case stood or fell on the credibility of Karla Homolka. Unnecessary damage to her credibility might have been fatal to the Crown's case.

It is in this context that I think the risks and benefits of laying a charge ought to be analyzed. The benefit of a charge is found in the letter of James Treleaven dated May 26, 1995:

A further consideration is the impact that earlier admission would have had on a guilty plea and sentence. While it cannot be said with certainty that the sentence imposed would necessarily have been greater, any additional punishment would not have added significantly to the sentence of twelve years imposed by the court.

The benefit of charging would be the possible addition of, at most, two years to Karla Homolka's total sentence. At risk was the successful prosecution of Paul Bernardo for first degree murder.

The Management Committee deliberated. Its members were reluctant to recommend against charging because of the gravity of the offence and the likely perception that Karla Homolka was being treated leniently. Nevertheless, the members of the Management Committee eventually came to the unanimous conclusion that, weighing all of the factors and applying their collective experience, the public interest would be better served if charges were not laid. The decision was a difficult one. Before I interviewed Leo McGuigan, other members of the Management Committee told me that he had said it was the most difficult decision he ever had to make in his professional life. When I met with him, he

confirmed that he had made that statement, and authorized me to attribute it to him in this report.

The Management Committee accordingly advised the police that charges should not be laid. That advice and the reasons for it were set out in great detail in the letter written on behalf of the Management Committee by James Treleaven on May 26, 1995. His letter is thoughtful, thorough and complete. I would be doing it a disservice if I attempted to summarize it. It is an appendix to this report and I commend the study of it. It has been brought to my attention, and I am authorized to disclose, that the solicitors for the Niagara Regional Police Services Board, Messrs. Sullivan, Mahoney of St. Catharines, agreed with the advice contained in that letter. Before Karla Homolka testified, her counsel was advised in writing that she would not be charged.

On May 26, 1995, Larry Taman was the Deputy Attorney General. I have satisfied myself, through a personal interview with him, that he was fully aware of the decision made by the Management Committee and of the advice which was given to the Green Ribbon Task Force by James Treleaven. He agreed with the decision. He agreed with the advice and the reasons for it.

I have also satisfied myself, through a personal interview with the Attorney General at that time, Marion Boyd, that she was fully briefed on the decision taken by the Management Committee,

the advice given to the Green Ribbon Task Force and the reasons for it. She recognized that laying a charge might realistically create the impression with the jury that the Crown itself did not believe the witness upon whom its case against Paul Bernardo stood or fell. She accepted the advice of her legal advisers. Moreover, it was her own opinion that the Crown should not risk prejudicing its case against Paul Bernardo by doing something which was within its power not to do.

I am asked to express my opinion about whether the advice given to the Green Ribbon Task Force was appropriate. I can state shortly that, in my opinion, it was. While I appreciate the force of the arguments of those who hold a different view, I must say that I am in respectful disagreement with them. I concur entirely with the decision of the Management Committee and with the reasons for that decision which were expressed by James Treleaven in his letter of May 26, 1995.

There are some observations which I wish to add.

First, I am impressed by the fact that this issue was decided by persons who were not directly responsible for the different prosecutions. Those persons held contrary views on the issue. It would have been extremely difficult for the police had they received conflicting advice.

Second, I am impressed by the persons who composed the Management Committee. While I was a judge, I dealt with each one of them in his professional capacity. (I never had social contact with any of them). I know from personal experience and by the reputations which they hold in the profession that each of them is an able lawyer and a person of complete integrity.

Third, I am impressed by the process which the Management Committee adopted. It did not act in haste. It took great care in the making of the decision. It considered and weighed the arguments of those who urged that charges be laid and those who opposed the laying of charges. It insisted upon careful investigation of Karla Homolka's claim that she had amnesia respecting the June 7, 1991 assault. It did not deal with the issue of the public interest until it was satisfied that the claim of amnesia was genuine and well supported. It afforded counsel for Karla Homolka an opportunity to be heard and to present evidence. It took into account the views of Jane Doe and of her parents. It weighed factors which, to me, seem relevant to a consideration of the public interest.

Fourth, there is a factor which, while it was not expressly dealt with by the Management Committee, weighs heavily with me. It is the importance which, as a general rule, should be given to the trial strategy chosen by the prosecutors who are responsible for a prosecution. Earlier in this report, I mentioned that there are

two methods of dealing with an accomplice witness. One is to treat her with disdain. The other is to deal with her as the prosecutors did in this case.

That choice was called into question by a number of persons whom I interviewed. Each time that happened, I thought it somewhat droll. I have often heard, and I must confess being a party to, second guessing when a case has been lost. It is unusual that successful tactics are later called into question.

The other method might well have succeeded. I do not know that, nor can anyone ever know it. If Paul Bernardo had been convicted only of manslaughter because the trial prosecutors had been forced to adopt that method, as a result of a charge against Karla Homolka, they could have been subject to the unfair criticism that they had adopted a risky trial strategy. That criticism would be unfair because it was a strategy which they did not want to adopt. Nevertheless, it would have fallen upon them because trial prosecutors are always ultimately responsible for the success of a prosecution.

Since Raymond Houlahan and Gregory Barnett bore that responsibility in this case, their judgment about trial strategy was entitled to great weight. For that reason, if I had been having difficulty deciding whether a charge should have been laid

in this case, the deciding factor for me would have been the opinion of the prosecutors responsible for the murder prosecution.

Fifth, the decision which the Management Committee had to make involved weighing the danger of damaging Karla Homolka's credibility, and thereby jeopardizing the prosecution of Paul Bernardo, against the uncertain additional punishment to which she would be subjected in the event of a conviction. While it is distasteful to think of her escaping that punishment, I do not think the possibility of obtaining it could conceivably justify jeopardizing the murder prosecution of Paul Bernardo.

Sixth, and finally, I started this portion of my report by citing the sage observation of Mr. Justice Kovacs that there could be no room for error in the successful prosecution of Paul Bernardo. It is my view that when the Crown decided not to charge Karla Homolka with the assault on Jane Doe, it acted carefully and prudently in compliance with his call for caution. No error was made. If the decision had been different, the result might have been different and an error might have been committed.

I recognize that the decision to give the advice not to prosecute was a difficult one. Nevertheless, the answer which I give to the question posed by the second term of reference is an unqualified yes.

TERM OF REFERENCE NO. 3

WHETHER IN ALL THE CIRCUMSTANCES, IT IS APPROPRIATE OR FEASIBLE TO TAKE FURTHER PROCEEDINGS AGAINST KARLA HOMOLKA FOR HER PART IN THE DEATHS OF KRISTEN FRENCH AND LESLIE MAHAFFY AND SEXUAL ASSAULT ON JANE DOE.

I will respond to this term of reference in two parts. In the first part, I will deal with the question of whether it is appropriate or feasible to take further proceedings against Karla Homolka for her part in the deaths of Leslie Mahaffy and Kristen French. In the second part, I will consider the same question as it relates to the sexual assault upon Jane Doe.

The Homicides

Having expressed my opinion that the May 14, 1993 resolution agreement was an appropriate one, and having regard to the need for finality in criminal litigation, I would be hard pressed indeed to say that it would be appropriate to take further proceedings against Karla Homolka for her part in the homicides even if it were feasible to do so. I have been made aware, however, of two opinions, expressed by members of the legal profession, that it is not only appropriate to take further proceedings but that it is feasible to do so.

The first of these opinions is one which was reported in the news media. The opinion expressed in the newspaper article is that the "videotapes play the role of a new witness who is able to verify that Ms Homolka's involvement was substantially greater than she originally claimed". As I understand that opinion, murder charges can now be laid against Karla Homolka for her part in them. The authority advanced in support of that opinion is the decision of the Court of Appeal for Ontario in *R. v. MacDonald* (1990), 54 C.C.C. (3d) 97.

That case involved the murder of one Daniello. MacDonald was suspected of being implicated in it and was investigated by the police. He retained a lawyer and, after their consultation, his lawyer met with the Crown Attorney. The lawyer advised the Crown Attorney that his client had information which would assist in the investigation, but insisted that his client not be charged with murder. As a result of their discussions, a resolution agreement was entered into between the Crown and MacDonald's lawyer. The relevant terms of that agreement were:

1. MacDonald would not be charged with murder *provided he gave a truthful statement* to the police regarding the murder of Daniello;
2. MacDonald would be charged with being an accessory after the fact to murder; and

3. MacDonald would give evidence at the preliminary hearing and at the trial of the person to be charged with the murder, one Gray.

Pursuant to the agreement, MacDonald then gave a statement to the police. He told them that he, Daniello and Gray went together on a fishing trip. Upon arriving at the place where they planned to fish, Gray and Daniello left him near the vehicle and went together to the water's edge. Shortly afterwards, he heard shots. He went towards the water and, on his way, he met Gray who was carrying a handgun. Near the water he found Daniello who had been shot to death. He admitted that he helped Gray hide evidence which would have implicated Gray in the killing. He maintained, however, that he had no foreknowledge of the killing and had played no part in it. If his statement were true, he would not be a party to the offence of murder but, indeed, would be only an accessory after the fact of the murder.

Gray was charged with Daniello's murder. MacDonald was charged with being an accessory after the fact. The preliminary hearing in the murder case against Gray proceeded before MacDonald was to be tried as an accessory after the fact.² MacDonald testified at Gray's preliminary hearing. His testimony was

²The plea arrangement with MacDonald was structured so that all charges against him arising out of the killing of Daniello would be fully dealt with before MacDonald would be called upon to testify at Gray's murder trial. This was in accordance with the approved practice which I described earlier.

substantially the same as the statement which he had given to the police. Another witness, one Carter, also testified at Gray's preliminary hearing. He told a very different story than did MacDonald. He said that not only did MacDonald know in advance that Gray was going to kill Daniello but, in fact, Macdonald had personally arranged for Gray to commit the murder. On Carter's testimony, MacDonald was the instigator of the murder and obviously a party to it.

The Assistant Crown Attorney who was conducting the preliminary hearing, after seeing and hearing both MacDonald and Carter testify, concluded that MacDonald's statement to the police and his evidence at the preliminary hearing were not truthful. He advised MacDonald's counsel that MacDonald would be prosecuted for murder. At the opening of MacDonald's murder trial, his counsel moved for a stay of the charge as an abuse of process on the grounds that the Crown had violated the resolution agreement. The motion was dismissed by the trial judge. MacDonald was convicted of first degree murder.

The Court of Appeal held that because MacDonald did not give a complete and truthful statement to the police as required by the terms of the resolution agreement, the Crown was under no obligation to refrain from prosecuting him for first degree murder.

There are a number of important distinctions between the *MacDonald* case and Karla Homolka's situation. The first distinction is that Karla Homolka did fulfil her agreement to provide full and truthful accounts of not only her participation in the homicides, but all other criminal activities in which she participated and of which she had knowledge. While the videotapes graphically portrayed her carrying out her role, they did not change the disclosure which she had already made in respect to Leslie Mahaffy, Kristen French and Tammy Homolka. The second distinction is that the Crown's withdrawal from the agreement occurred before MacDonald had prejudiced himself by being found guilty as an accessory after the fact. The third distinction is that Karla Homolka has been convicted of manslaughter in relation to the deaths of Leslie Mahaffy and Kristen French whereas MacDonald had not been convicted or acquitted of a homicide in relation to the death of Daniello at the time he was prosecuted for murder.

It is my view that the decision of the Court of Appeal in the *MacDonald* case does not support the suggestion that murder charges could now be laid against Karla Homolka. Indeed, my reading of the case leads me to see in it an implication that had MacDonald given a truthful statement, as he had agreed to do, the Crown would have been held to its resolution agreement with him and could not have prosecuted him for murder.

I return briefly to the third distinction which I mentioned above. The fact that Karla Homolka has been convicted of manslaughter for her part in the killings of Leslie Mahaffy and Kristen French is determinative of the feasibility of now prosecuting her for murder. The *Criminal Code* specifically bars such a course of action. Section 610(2) provides that "a conviction or acquittal on an indictment for manslaughter...bars a subsequent indictment for the same homicide charging it as murder".

Because Karla Homolka lived up to her end of the resolution agreement, it would be clearly inappropriate to take any further proceedings against her arising out of the deaths of Leslie Mahaffy or Kristen French. I anticipate that if such proceedings were taken, they would be found to be an abuse of process. Even if it were appropriate to take proceedings against her, it would not be feasible to do so because Section 610(2) of the *Criminal Code* is an absolute bar to them.

The second opinion was expressed by Professor Alan Young of Osgoode Hall Law School. In a letter to the Attorney General dated July 13, 1995, Professor Young suggested that the Crown should seek leave to appeal the sentences of twelve years imposed upon Karla Homolka on July 6, 1993. His letter is an appendix to this report. The basis of his suggestion was that Karla Homolka was less than forthright with respect to the information which she provided to the police in her induced and cautioned statements. He thought,

therefore, that the Crown Attorney and the Sentencing Judge were deprived of full and frank disclosure before the Crown agreed to the sentences of twelve years and before the Trial Judge imposed them. I quote from one paragraph of his letter:

I wish to note that I am not suggesting that any Crown Attorney involved in this plea resolution agreement was acting improperly or irresponsibly. The Crown did what it had to do at the time in order to bring Mr. Bernardo to justice. However, I also believe that Ms. Homolka manipulated and misled the Ministry of the Attorney General and was therefore able to secure a sentence which did not take into account her full involvement regarding the deaths of T. Homolka, L. Mahaffy and K. French. In addition, there were other sexual assaults committed by Ms. Homolka which were not disclosed prior to her being sentenced in July 1993.

Professor Young was good enough to meet with David Humphrey and me to discuss his opinion in detail with us. He also provided us with a memo which he described as a "bare bones analysis" of his opinion.

The foundation of his thesis is that Karla Homolka perpetrated a fraud upon the police, the Crown and the Court by her wilful failure to disclose all her criminal activities. In his memo to us, he said:

In a nutshell, I believe that Ms. Homolka perpetrated a fraud by carefully hiding the full extent of her criminal wrongdoing committed from 1990 - 1993.

During our discussions, he agreed that if his assumption of fraud could not be substantiated, then his thesis would lose much of its weight. In my opinion, the assumption that Karla Homolka committed fraud is not sustainable.

In earlier parts of this report, I explained that, with the exception of one of the Jane Doe episodes, Karla Homolka did make full, complete and truthful disclosure of all of the criminal activity in which she participated or of which she had knowledge. In fairness to Professor Young, it must be noted that he did not have access to the details of the disclosure which Karla Homolka made to the Crown through her counsel on and after February 14, 1993. He did not have access to the induced statements, the cautioned statements or the transcripts of the many interviews which the police had with Karla Homolka. He was not made aware of the extent of the assistance which she gave to the police and to the Crown. He had no way of being aware of the fact that, through her counsel, before the resolution agreement was entered into, Karla Homolka had disclosed the full details of her sister's death and of the roles which she and Paul Bernardo played in it. Until that disclosure, the police did not know that they had caused her death or that Tammy Homolka had been sexually assaulted by them.

It also seems that Professor Young did not have the correct information about the details of her disclosure of the sexual assaults upon Jane Doe. The details of that disclosure are set out in an earlier portion of this report.

With respect to the failure of Karla Homolka to disclose the details of the June 7, 1991 assault on Jane Doe, Professor Young did not have available to him the medical information which showed, to the satisfaction of the police, the Management Committee and me, that there is good reason to believe that her claim of amnesia for that event is genuine. The police thoroughly investigated the claim of amnesia before concluding that a perjury charge could not be substantiated.

The amnesia which would prevent a finding that she committed perjury would also prevent a finding of fraud on her part. The essential mental elements of the two offences are very similar. At its most basic, fraud involves the making of a false representation, knowing it to be false, with the intention that someone act upon it to his or her detriment. Fraud connotes an element of deliberate dishonesty. If, as the medical evidence strongly suggests, Karla Homolka did not remember the incident, she cannot be said to have fraudulently or dishonestly failed to disclose it.

In order to prove fraud, it would be incumbent upon the Crown to prove beyond a reasonable doubt that her amnesia is not genuine. The evidence available to the Crown on that issue suggests that her amnesia is genuine. On the present record, the evidence is insufficient to support a contention that her amnesia is false. Therefore, an allegation of fraud could not be sustained.

In my view, the evidence does not support a conclusion that Karla Homolka committed fraud upon either the Crown or the Court which sentenced her. In the absence of fraud, there is no basis to institute further proceedings against Karla Homolka arising out of the homicides.

In the absence of fraud, I do not think it either appropriate or feasible to seek leave to appeal the sentences imposed on July 6, 1993. I do not think it appropriate because to do so would violate the terms of the resolution agreement. I do not think it feasible to do so because the Crown would not have a reasonable chance of obtaining the extension of time necessary before an application for leave to appeal would be entertained by the Court of Appeal. This is because the Crown agreed to the sentence and did not have an intention to appeal it within the time limited for an appeal.³

³The time limit within which an application for leave to appeal a sentence can be made is thirty days. The Court of Appeal can extend that time limit but will usually do so only if the Crown shows that it had the intention to appeal within the time limit of thirty days and it can provide a reasonable explanation for its failure to act within that time limit.

The law in Ontario is that resolution agreements, as a general rule, must be honoured and the exceptions to that rule must be very rare. I cite the Martin Committee's expression of its opinion upon the obligation of the Crown to honour resolution agreements (at pages 312 - 313):

The Committee views the duty of counsel to honour resolution agreements as simply a particular example of the duties of integrity and responsibility discussed in some detail at the outset of this Report. As such, honouring resolution agreements lies at the heart of counsel's professional obligations. Implicit support for the requirement that resolution agreements be honoured can be found in the decisions of the Ontario Court of Appeal in *R. v. Brown* (1972), 8 C.C.C. (2d) 227 and *R. v. Agozzino*, [1970] 1 C.C.C. 380. Agreements reached following resolution discussions are also, in the Committee's view, in the nature of undertakings. The Law Society of Upper Canada's Rules of Professional Conduct, Rule 10, Commentary 8, states that undertakings given in the course of litigation, "must be strictly and scrupulously carried out".

In addition to being ethically imperative, honouring resolution agreements is a practical necessity. Agreements following resolution discussions, be they agreements about the conduct of the trial, or agreements with respect to plea and submissions on sentence, dispose of the great bulk of the contentious issues that come before the criminal courts in Ontario. Thus, the binding effect of such agreements is a matter of the utmost importance. If agreements arrived at during resolution discussions cannot be relied upon, the effort expended in

achieving them is for nought, and the great benefits to both the accused and the administration of justice that resolution discussions can produce are rendered unattainable. For these reasons, the situations in which Crown counsel can properly repudiate a resolution agreement are, and should be, very rare. (emphasis in text)

In blunt language, except in very rare circumstances, the ordinary and salutary expression that "a deal is a deal" is applicable to the Crown. The point is more elegantly made in a thoughtful article by Associate Dean Allan Hutchinson and Adam Bernstein of Osgoode Hall Law School. The article is entitled "Bargaining in the Shadow of the Courts" and may be found in the January/February 1996 issue of *Policy Options*, Vol. 17, No. 1, page 21. At page 25, after analyzing the resolution agreement between the Crown and Karla Homolka and its implementation, the authors said:

To set aside such arrangements so long after the fact is more likely to bring the administration of justice into disrepute than uphold it.

Having concluded, for reasons expressed earlier, that the resolution agreement of May 14, 1993 was an appropriate one in all of the circumstances, and having regard to the fact that it was entered into with the full knowledge and assent of the Attorney General herself and her most senior legal advisers, it is my view

that this is not one of those "very rare" cases where the Crown would be entitled to repudiate the resolution agreement. Moreover, as pointed out above, it is not feasible to do so because Section 610(2) of the *Criminal Code* is an absolute bar to proceeding against Karla Homolka for murder.

It is my opinion, therefore, that it is neither appropriate nor feasible to take further proceedings against Karla Homolka for her part in the deaths of Leslie Mahaffy and Kristen French.

Jane Doe

Crown counsel advised the Green Ribbon Task Force in May of 1995 that, in their opinion, it was in the public interest to exercise their prosecutorial discretion against charging Karla Homolka for the June 7, 1991 assault upon Jane Doe. This advice was quite different from the decision to enter into the resolution agreement. The resolution agreement resulted from the striking of a bargain. Each side gained something, and each side lost something.

The exercise of the Crown's prosecutorial discretion, however, did not involve Karla Homolka giving up anything. The exercise of the Crown's prosecutorial discretion was a unilateral act on its part taken in the advancement of what Crown counsel saw, correctly in my view, to be the public interest. The stark question which is

posed is whether the Crown can now reverse its position and charge her.

Can it? There is no statutory bar to its doing so. There is no equivalent of Section 610(2) of the *Criminal Code* which stands in its way. The question which I think ought to be asked, however, is: should it? That question engages the very integrity and image of rectitude of the Crown itself. Put bluntly, can the Crown be seen to change its mind about a considered decision taken in order to obtain a particular objective once that objective has been achieved.

When Crown counsel made their decision, they took into account factors which were appropriate and relevant. Their overriding concern was that the public interest in seeing Paul Bernardo responsibly prosecuted for murder charges required that Karla Homolka not be charged because of the damage that a charge would almost certainly do to her credibility. She was not charged and the anticipated damage was not done to her credibility. The jury believed her and Paul Bernardo was found guilty of two charges of first degree murder.

Nothing has changed since that decision was taken except that the result for which it was made has been achieved. The public interest in May of 1995 required that Karla Homolka not be charged so that Paul Bernardo could be convicted. I do not think that the

fact of his conviction can retrospectively reverse what was then in the public interest.

I have tried, without success, to find a legal analogy to this situation in the hope that it may give guidance. I first thought of the law that authorizes a court to enforce the undertakings which people give to one another. That would not be a good analogy because one of the reasons why the courts enforce those undertakings is to protect persons from acting to their detriment in reliance upon those undertakings. The notification to Karla Homolka that she would not be charged could not have caused her to act to her detriment. Even if she had been charged, she would have been subpoenaed and she would have been legally required to testify. In saying that, I suppose I am begging the practical problem which every trial lawyer understands, and that is the great difference between a co-operative witness and one who, rightly or wrongly, feels that she is being very unfairly dealt with by the party who calls her as a witness. Nevertheless, from a technical and legal point of view, Karla Homolka had to testify for the Crown regardless of whether the charge was laid or not.

I have looked to the law of contract but found no help. I will not repeat the earlier discussion about the applicability of the resolution agreement of May 14, 1993 to the June 7, 1991 assault on Jane Doe. For the reasons which I stated earlier, I will make my report based upon the assumption that the resolution

agreement does not apply to it. If it did apply, my recommendation would be easy to make. In that case, if the Crown now charged Karla Homolka, it would be improperly repudiating the resolution agreement. Upon my assumption, however, that the resolution agreement does not apply, there is no basis to engage the law of contract.

In the early stages of the inquiry, some questions came to my mind about practical problems encountered in the day to day practice of criminal law which I thought might have a bearing on some of the issues I had to consider. I decided, therefore, that I would ask several criminal lawyers, whose opinions I respect, to give me the benefit of their experience on a number of matters. In my discussions with each of them, on a hypothetical basis, I outlined this very situation and asked what their reaction would be if they learned that the Crown now decided to charge Karla Homolka. The first reaction, and it was a common one, was one of surprise that, in the absence of some substantial change in circumstances, the Crown would even consider going back upon a considered decision not to prosecute a person. This would be particularly so after having told the person that she would not be charged. None of them could think of, or had heard of, even one case where a considered decision taken by senior Crown counsel that a prosecution was not in the public interest had been reversed.

During the course of the inquiry, it was necessary for me to interview a number of Crown Attorneys, Assistant Crown Attorneys and Crown counsel. I raised the same issue with most of them. None of them had heard of a considered decision taken by senior Crown counsel not to prosecute being reversed. One of them asked a number of senior prosecution counsel, past and present, whether any of them had ever heard of an Attorney General countermanding a predecessor's *case specific decision*, as opposed to a decision on a matter of policy. He was unable to find any occasion where that had happened. In my opinion, the reason that no one, to whom I have spoken, has heard of such a situation is because it is unthinkable that it should happen.

The Crown holds a very special place in the administration of justice. The men and women who represent it day in and day out before the courts have placed upon them a responsibility which is not borne by lawyers acting for private clients. In addition to being advocates, they have a quasi-judicial role. In the performance of that duty, they are called upon to make difficult decisions and to exercise that unique discretion which is theirs. In doing so they must not only faithfully prosecute an individual case, but also uphold the integrity of the criminal justice system. Each one of them is required to be men and women of their word. The same is true of the Crown whom they represent. It cannot be thought that the Crown's word is subject to change. It can never

be thought that the word of the Crown cannot be accepted at face value.

In all of the interviews that I have conducted, in the reading that I have done upon the office of the Crown, and from my own professional experience as a criminal lawyer and judge, there is one immutable principle which stands out. It is that the word of the Crown is its bond. A case as horrible as this one, where public feelings run high against a particular individual, sorely tests one's principles. But if the principle is right, then it must prevail, even in this case. Because if that principle is abandoned in this case, then who can be sure that it will not be abandoned in another, and in another, until the time arrives when the word of the Crown is mere dross.

Many criminal lawyers have told me that in every aspect of their daily practices, they have to take and rely upon the word of the Crown on a great variety of matters. If, as a matter of principle, they know that the word of the Crown is not its bond, they fear for the proper administration of justice.

We are not talking about an honest misunderstanding about the terms of an oral resolution agreement in a careless driving case. We are talking about a situation where the Crown, after careful investigation and weighty consideration, with the knowledge and consent of the Attorney General herself, said to the people of

Ontario that, in its opinion, having regard to the public interest, Karla Homolka should not be charged. It has told Karla Homolka that she would not be charged. If a charge were now laid, and the only change is that the Crown has obtained the benefit it sought by not charging her, can Karla Homolka not say, with some justice, that the Crown in Ontario is capricious if not devious? Can the Crown put itself in a position where someone like Karla Homolka can, with justice, accuse it of being capricious or devious?

The Crown did not charge Karla Homolka because it did not want the charge to damage her credibility as a witness against Paul Bernardo. It made a tactical decision in order to help its case against Paul Bernardo. That tactic succeeded and he was convicted. If the Crown charged her now, it seems to me, the Crown would be saying that her credibility was not worth supporting in the first place. If that were the case then one wonders why the Crown supported her credibility at Paul Bernardo's trial. Would Paul Bernardo not then be entitled to say, with some justice, that the Crown in Ontario had been duplicitous in the course of its prosecution of him? Can the Crown put itself in a position where someone like Paul Bernardo can, with justice, accuse it of being duplicitous?

I think that there is an important principle at stake. The rectitude and honour which the Crown must always have and must always demonstrate that it has, demand that it stand by the

considered decisions which it takes in the course of criminal litigation. There may be exceptional circumstances which, in very rare cases, require an exception to this principle. The general rule was well, if bluntly, expressed to me by one of the senior defence counsel in the province. He said that when the Crown makes a tactical decision, it is stuck with it. It seems to me that the obligation of the Crown to stand by its decisions applies to all of its decisions, even ones as distasteful as this.

It is my opinion that to lay a charge now, after saying it would not, would bring dishonour upon the Crown. That should not be allowed to happen.

In the course of Mr. Justice Campbell's inquiry and mine, Jane Doe, her mother and father were all interviewed separately. Each was specifically asked to give their opinion about whether Karla Homolka should now be charged for offences arising out of her assaults on Jane Doe.

Jane Doe is now 20 years of age. She said that she did not think that charges should be laid. She gave us two reasons for her view. The first was that, in her heart, she knew that Paul Bernardo was the bad person. She told us that Karla Homolka was her friend and then said: "she had to do what she did, not because she wanted to, but because he made her do it". Her second reason was that now she just wants to be left alone. The events still

weigh heavily on her mind. She wants to be left alone so that she can get on with her life.

Jane Doe's mother said that, in May of 1995, her preference was that charges be laid. Now she thinks that Jane Doe's wishes should be respected. Jane Doe's father also would have preferred charges to be laid in May of 1995. Now he is not supportive of charges being laid. His view is "Jane has had enough. Leave her alone".

The Martin Committee has recommended that the wishes of a victim be one of the factors which can properly be taken into account in deciding whether it is in the public interest that a charge not be prosecuted. The victim's wish must have even greater force when consideration is being given to the extraordinary step of repudiating a decision not to lay a charge.

The final matter with which I wish to deal is the need for finality in the litigation process and how that affects Jane Doe. Running through all areas of the law is the concept that there must be finality to disputes and to litigation. It is the concept which lies at the heart of statutory limitation periods for bringing civil actions. It is central to the time periods which are imposed on the taking of various steps and the engaging of various procedures during the litigation process. It underlies the doctrine of laches in the law of equity. It is the value which is

encompassed by the constitutional right of an accused to be tried within a reasonable time. While the focus of that value, in the criminal law, is usually upon the right of the accused, it is also an important principle for the victim.

Jane Doe was first assaulted almost five years ago. Her unwholesome association with Paul Bernardo and Karla Homolka consumed a year and a half of her young life. The ensuing investigations and trial, with the terrible pressures which they exerted upon her, covered another two and a half years of her life. Now, almost five years after she first went into that infernal place, which was 57 Bayview Drive, she and her family have asked simply that she be left alone so that she can put that sad chapter of her life behind her. In these circumstances, it seems to me that Jane Doe's wishes and the principle requiring finality of litigation come together so that each becomes of greater importance and, together, they are virtually conclusive of the issue.

There are three basic reasons why I think it would be neither appropriate nor feasible to take further proceedings against Karla Homolka for sexually assaulting Jane Doe. To do so would tarnish, perhaps irremediably, the honour of the Crown and its reputation for rectitude. To do so would be against the wish of the victim in circumstances where her wish ought to be given very great weight. To do so would be contrary to the principle requiring finality to litigation.

My answer, therefore, to the third term of reference is no.

TERM OF REFERENCE NO. 4

TO INQUIRE INTO SUCH RELATED MATTERS, IF ANY, WHICH THE ATTORNEY GENERAL MAY, FROM TIME TO TIME, DIRECT.

I was not asked to inquire into any other matters.

CONCLUSION

Many public comments have been made which imply that the Crown has shown favouritism towards Karla Homolka. This sentiment is expressed in many different forms. It can be summarized in two contentions: that Karla Homolka got a "sweetheart deal" and that she was given "preferential treatment". Because those implications could be seen to cast aspersions upon the integrity of the persons who made the decisions, I should say something about them by way of conclusion to this report.

The first decision, to agree to a twelve year sentence, was driven by sheer necessity and not by a desire to treat Karla Homolka differently than any other criminal. I have no doubt that the Crown would have preferred that Karla Homolka appear in the prisoner's dock with Paul Bernardo facing first degree murder charges. However, without her evidence, at the time the decision was made, the police did not have the evidence to charge Paul Bernardo with the offences arising out of the deaths of Leslie Mahaffy and Kristen French, much less convict him of them.

Distasteful as it is, the practice which has existed for over three hundred years of giving immunity or a "discount" to an accomplice to obtain her evidence against a co-perpetrator is sometimes a necessary one and it is a legal one. Regrettably, the

investigation and prosecution of crime is rarely easy and often requires the taking of steps which are unpleasant. Nevertheless, in the proper discharge of their responsibilities, prosecutors must take those distasteful steps if, in a particular case, it is necessary to do so and the steps taken are legal ones. In the Paul Bernardo case, the step was both necessary and legal. It is a step which has been taken countless times in the past and, if certain criminals are to be brought to justice, will have to be taken countless times in the future.

Serious crimes had been committed and the Crown had information which led it to the conclusion that Paul Bernardo was the brutal killer of two young women. At the time that the Crown made the decision to deal with Karla Homolka, the crucial videotapes, which turned out to contain so much incriminating evidence, had not been found. At that time, the Crown did not know whether they would ever be found. The evidence to prove Paul Bernardo's guilt was available if an agreement could be reached with Karla Homolka to provide it.

The Crown did not have the luxury to wait and see whether, at some time in the indeterminate future, the necessary evidence would come from another source. In the meantime, the Crown probably would have lost the opportunity to get it from her. The Crown, therefore, did what it had to do, and what it will have to do again and again in the future; it dealt with the accomplice. In the

light of what was known at the time, the Crown paid an acceptable price for Karla Homolka's evidence. It was only when the videotapes emerged that the value of her evidence was diminished. If the authorities had been in possession of the videotapes on May 14, 1993 they would not have dealt with her. They would have offered her nothing for her evidence.

The second decision, made on May 18, 1995, was not made for the purpose of benefitting Karla Homolka. It was a considered decision taken to advance the Crown's case against Paul Bernardo. The decision was advocated by two trial prosecutors who, between them, had accumulated over forty years of trial experience. The decision was made by four other lawyers who between them brought over one hundred years of trial experience to the problem. It was a tactical decision which turned out to be right. The risk that was seen in charging Karla Homolka with the June 7, 1991 assault on Jane Doe was that serious damage would be done to the case against Paul Bernardo for the murders of Leslie Mahaffy and Kristen French. The benefit of charging her was some uncertain increase in the sentence which she was then serving. It was decided that the risk of charging her was too great to be taken. I, for one, am not prepared to second guess that decision.

The persons who made these two decisions are long time public servants with well deserved reputations for competence and probity. The implication that any one or more of them made his decision for

the purpose of benefitting Karla Homolka, giving her a "sweetheart deal" or "preferential treatment", is unfair and unjust. It is entirely without foundation. I reject it completely.

EPILOGUE

In the course of my inquiry, a number of matters were raised with me which I felt I should not comment upon because they did not fall within my terms of reference. Nevertheless, two of them deserve mention in the event that it is thought that they require further study or consideration.

The first arises out of the fact that Paul Bernardo committed offences in more than one jurisdiction. The bulk of the sexual assaults occurred in Scarborough or in or near Metropolitan Toronto. Those offences were prosecuted by the Crown Attorney in Scarborough. The offences against Leslie Mahaffy and Kristen French occurred in Niagara and were prosecuted by the Crown Attorney in St. Catharines. Certain differences of opinion arose between the prosecutors responsible for the two sets of offences. One of them, which I mentioned in my report, was whether or not Karla Homolka should be charged with an offence respecting Jane Doe. Another was a disagreement about which set of charges should be tried first. Difficulties also arose in respect of fulfilling the Crown obligation to make disclosure to the defence. Because some information was relevant to one set of charges, but not necessarily to the other set of charges, problems arose regarding what should be disclosed and by whom.

It is to be expected that differences of opinion and other problems are likely to result in this type of situation because it is natural for a prosecutor to have good reason to think that his or her case should take precedence over the other. There is also a tendency for a person to concentrate on his or her case to the extent that important considerations respecting the other one are not fully appreciated. More than one person suggested that less difficulty in prosecuting such cases would be encountered if there was one Crown Attorney to whom the responsibility for the overall prosecutions of both sets of charges was assigned. In the words of one person, "there should be a top Crown". If that practice were adopted, it would obviate the need for a Management Committee by placing overall responsibility in the hands of one person.

The second matter involves the difficult and distasteful matter of dealing with accomplices. It was suggested that it would be helpful if the provincial Attorneys General and the Minister of Justice could establish guidelines for prosecutors to follow when the need arises to consider negotiating with an accomplice to obtain his or her evidence.

I would like to say a final word. During my interview with James Stewart, one of the Crown counsel who dealt with certain of the pre-trial motions, he made a comment which struck me with particular force. He said that the Paul Bernardo and Karla Homolka case was a "very black case". The facts were horrible, the

evidence unspeakably gruesome and grotesque, the suffering of the victims and the impact upon their families were unimaginable. The case took a heavy toll on the lives and the health of some of the persons who investigated it, prosecuted it and participated in the defence of it. Until I had the privilege of meeting the Mahaffy family, the French family and Jane Doe and her parents, I agreed with the observation made by James Stewart.

I now realize that there is one bright side to the case. It is the courage, grace and determination which those persons demonstrated by the way in which they are coping with tragedy and hurt of a degree which no human being should be asked to bear. They show to a cynical world that the human spirit can be indomitable. They show that the good in human nature can surmount even the grossest of evil, that evil which touched their lives and took the lives of their beloved ones.

APPENDIX "A"Alphabetical Index of Persons Interviewed During the Inquiry

Atkinson, Thomas A., Scarborough	Assistant Crown Attorney
Baldwin, Leslie M., Toronto	Assistant Crown Attorney
Barnett, Gregory, St. Catharines	Assistant Crown Attorney
Bevan, Vincent, St. Catharines	Inspector, Niagara Regional Police Service
Boyd, Marion, M.L.A., Toronto	Former Attorney General of Ontario
Bryant, Anthony G., Toronto	Barrister, counsel for Paul Bernardo
Code, Michael, Toronto	Assistant Deputy Minister -Criminal Law
Copeland, Paul D., Toronto	Barrister
Danson, Timothy S.B., Toronto	Barrister, counsel for the Mahaffy and French families
Dawson, D. Fletcher, London	Barrister, Vice- President, Criminal Lawyers' Association
Doe, Jane and her parents	
Durno, S. Bruce, Toronto	Barrister, President, Criminal Lawyers' Association
Edwardh, Marlys A., Toronto	Barrister
Epstein, Philip M., Toronto	Barrister
Fairburn, Michal J., Toronto	Crown Counsel, Crown Law Office - Criminal
Falconer, Julian N., Toronto	Barrister

French, Doug and Donna,
St. Catharines

Hall, Mary J., Scarborough

Crown Attorney

Hazelwood, Robert R., Quantico,
Virginia, U.S.A.

Supervisory Special
Agent, Federal Bureau of
Investigation Academy

Heller, Brian, Toronto

Barrister, Director,
Advocates' Society

Hill, The Honourable Mr. Justice
S. Casey, Brampton

Judge of the Ontario
Court of Justice (General
Division)

Homolka, Karla, Kingston

Houlahan, Raymond J., St. Catharines

Crown Attorney

Hubbard, Robert W., Toronto

General Counsel,
Department of Justice -
Canada

Hutchinson, Allan C., Toronto

Associate Dean, Osgoode
Hall Law School

Kellerman, J. Robert, Toronto

Barrister, Steering
Committee, The Law Union
of Ontario

Koziebrocki, Irwin, Toronto

Barrister, Treasurer,
Criminal Lawyers'
Association

Kristjanson, Freya J., Toronto

Barrister, counsel for
the Doe family

Levy, Earl J., Toronto

Barrister

Lockyer, James, Toronto

Barrister

Mahaffy, Dan and Deborah, Burlington

McGuigan, Leo J., Brampton

Regional Director of
Crown Attorneys for the
Central West Region

Mewett, Alan W., Toronto

Professor, University of
Toronto Law School

Misener, Mary E., Toronto	Barrister
Norris, John R., Toronto	Barrister
O'Connor, Dennis R., Toronto	Barrister, counsel for the Doe family
Porter, Shawn D., Scarborough	Assistant Crown Attorney
Rosen, John M., Toronto	Barrister, counsel for Paul Bernardo
Ruby, Clayton C., Toronto	Barrister
Segal, Murray D., Toronto	Director, Crown Law Office - Criminal
Stewart, James K., Toronto	Senior Counsel, Crown Law Office - Criminal
Sutherland, John A., Toronto	Barrister
Taman, Larry, Toronto	Deputy Attorney General
Thomson, George M., Ottawa	Deputy Minister of Justice of Canada
Treleaven, James A., Hamilton	Regional Director of Crown Attorneys for the Central South Region
Trudell, William M., Toronto	Barrister, Director, Canadian Counsel of Criminal Defence Lawyers
Vesa, Paul A., North York	Assistant Crown Attorney, President of the Ontario Crown Attorneys' Association
Waddell, J. Grant, St. Catharines	Chief of Police, Niagara Regional Police Service
Walker, George F., Niagara Falls	Barrister, Counsel for Karla Homolka
Warr, Anthony J., Toronto	Acting Inspector, Metropolitan Toronto Police

Whitzman, Stephen, Toronto

Barrister, Chair,
Canadian Bar Association
- Ontario, Criminal
Justice Section

Wiley, Jerome F., Toronto

Counsel, Metropolitan
Toronto Police

Young, Alan N., Toronto

Professor, Osgoode Hall
Law School

APPENDIX "B"Chronology of Certain Relevant Events

October 27, 1964	Date of Birth of Paul Bernardo
May 4, 1970	Date of Birth of Karla Homolka
Summer, 1984	Paul Bernardo begins abusive relationship with J.M.G.
April, 1986	Karla Homolka begins working at The Pet Centre
May 4, 1987	Paul Bernardo commits the first of his acknowledged sexual assaults: a rape
May 13, 1987	Paul Bernardo commits the second of his acknowledged sexual assaults
October 17, 1987	Karla Homolka and Paul Bernardo meet in the restaurant of a hotel in Scarborough
December 16, 1987	Paul Bernardo commits the third of his acknowledged sexual assaults: a rape
December 23, 1987	Paul Bernardo commits the fourth of his acknowledged sexual assaults: a rape
December 25, 1987	Paul Bernardo gives Karla Homolka expensive Christmas gifts
April 18, 1988	Paul Bernardo commits the fifth of his acknowledged sexual assaults: a rape
May 30, 1988	Paul Bernardo commits the sixth of his acknowledged sexual assaults: a rape

Late Spring - Early
Summer, 1988

Paul Bernardo prevails upon
Karla Homolka to allow him to
have anal intercourse

Summer, 1988

Paul Bernardo begins beating
Karla Homolka

November 16, 1988

Paul Bernardo commits his
seventh acknowledged sexual
assault: a rape

December 27, 1988

Paul Bernardo commits his
eighth acknowledged sexual
assault: an attempted rape

1989

Paul Bernardo becomes
increasingly critical of Karla
Homolka, insults, yells and
screams at her

Summer, 1989

Karla Homolka meets Jane Doe
(13 years old) at the pet store
where Karla Homolka is employed
and they become friends

August 15, 1989

Paul Bernardo commits his ninth
acknowledged sexual assault: a
rape

November 21, 1989

Paul Bernardo commits his tenth
acknowledged sexual assault: a
rape

December 5, 1989

Karla Homolka starts working at
the Martindale Animal Clinic
where she becomes acquainted
with Halothane and triazolam
(Halcion)

December 22, 1989

Paul Bernardo commits his
eleventh acknowledged sexual
assault: a rape

December 24, 1989

Karla Homolka and Paul Bernardo
become engaged to be married
and later fix their wedding
date for June 29, 1991

Spring, 1990	Paul Bernardo calls Karla Homolka his sex slave and she refers to herself as such; she is subjected to an increasing cycle of physical and psychological violence and abuse
May 26, 1990	Paul Bernardo commits his twelfth acknowledged sexual assault: a rape
May 28, 1990	Composite likeness of the Scarborough rapist begins appearing in Toronto press; it bears a striking resemblance to Paul Bernardo
Late Spring - Early Summer, 1990	Paul Bernardo tells Karla Homolka that he wants sex slaves brought to him at her parents' home
July - August, 1990	Paul Bernardo asks Karla Homolka to pretend that she is her sister, Tammy, during their sexual relations
Autumn, 1990	Paul Bernardo tells Karla Homolka that he wants to have sex with Tammy Homolka; discussions ensue about obtaining drugs to facilitate that act
November 20, 1990	At the request of the Metro Police, Paul Bernardo comes to police headquarters where he is interviewed in respect to the Scarborough rapes; he voluntarily provides saliva, blood and hair to the police
	That evening, Paul Bernardo tells Karla Homolka about his interview, but assures her that he is not the Scarborough rapist
December, 1990	Karla Homolka obtains Halcion and Halothane

December 23 - 24, 1990	Paul Bernardo and Karla Homolka drug and sexually assault Tammy Homolka; she dies
December 27, 1990	Funeral services are conducted for Tammy Homolka
December 28, 1990	Paul Bernardo orders Karla Homolka to obtain more Halcion
January 12 - 16, 1991	While Karla Homolka's parents are away for the weekend, Paul Bernardo brings a young woman to the Homolka home and has sexual relations with her; she leaves alive
Mid-January, 1991	Paul Bernardo is asked to leave the Homolka residence
February 1, 1991	Paul Bernardo rents 57 Bayview Drive, Port Dalhousie and moves into that house; shortly afterwards Karla Homolka moves in with him
February, 1991	Paul Bernardo begins smuggling cigarettes from the United States into Canada
March 25, 1991	Karla Homolka gets more Halcion pills for Paul Bernardo
April 6, 1991	Paul Bernardo commits his thirteenth acknowledged sexual assault: a rape
June 6 - 7, 1991	Jane Doe spends the night at 57 Bayview Drive where she is drugged, anaesthetized and sexually assaulted by both Paul Bernardo and Karla Homolka
June 15 - 16, 1991	Paul Bernardo abducts Leslie Mahaffy and takes her to 57 Bayview Drive where she is sexually assaulted by Paul Bernardo and Karla Homolka and strangled by Paul Bernardo

June 17 - 18, 1991

Paul Bernardo cuts the body of Leslie Mahaffy into pieces and encases them in concrete; Paul Bernardo and Karla Homolka dispose of the body parts

June 29, 1991

Paul Bernardo and Karla Homolka are married; Paul Bernardo tells her that he is the Scarborough rapist; the couple leave for a honeymoon in Hawaii

Body parts of Leslie Mahaffy are found in Lake Gibson

August 10, 1991

Jane Doe is drugged by Karla Homolka and sexually assaulted by Paul Bernardo at 57 Bayview Drive; she apparently stops breathing; Karla Homolka places a call to 911 and cancels it shortly afterwards

Late August, 1991

Jane Doe makes a trip to Toronto with Paul Bernardo and Karla Homolka

April 16 - 19, 1992

Paul Bernardo and Karla Homolka abduct Kristen French, take her to 57 Bayview Drive where both of them sexually assault her repeatedly and Paul Bernardo strangles her; her body is washed and left on a little used road near Burlington

April 30, 1992

The body of Kristen French is discovered

May 12, 1992

Police interview Paul Bernardo at his home

June 19, 1992

Karla Homolka leaves Paul Bernardo but returns on threat of exposure

December 22, 1992

Jane Doe's last visit to 57 Bayview Drive; she leaves after refusing to have full sexual intercourse with Paul Bernardo and she never returns

January 5, 1993

At the urging of Karla Homolka's co-workers, her mother and sister get her to leave 57 Bayview Drive and go to the hospital; before leaving, Karla Homolka searches unsuccessfully for the videotapes

January 9, 1993

Karla Homolka is discharged from the hospital and goes to live with her aunt and uncle Patricia and Calvin Seger in Brampton

January 25, 1993

Karla Homolka consults a lawyer about a divorce

February 1, 1993

The Centre of Forensic Sciences advises Metro Police that there is a match between Paul Bernardo's DNA and some of the Scarborough rapes

February 3, 1993

Metro Police begin 24 hour surveillance of Paul Bernardo

February 4, 1993

Metro Police attempt to make contact with Karla Homolka through her family

February 5, 1993

Karla Homolka communicates with Metro Police and a meeting is arranged for February 9, 1993 at the Seger residence in Brampton

Metro Police invite Inspector Bevan to a meeting at police headquarters in Toronto to be held on February 8, 1993

February 8, 1993

Karla Homolka sees divorce lawyer again

Inspector Bevan attends meeting with Metro Police and is briefed on the Metro investigation

February 9, 1993

Metro Police interview Karla Homolka at the Seger residence; she describes Paul Bernardo's brutality to her but does not disclose anything about the homicides; after police leave, she tells Patricia Seger the essential details of the Mahaffy and French murders and that Paul Bernardo is the Scarborough rapist

February 10, 1993

Karla Homolka makes appointment with George Walker for February 11, 1993

February 11, 1993

Karla Homolka meets George Walker and discloses to him the essential details of the murders of Leslie Mahaffy and Kristen French, the death of Tammy Homolka and that Paul Bernardo admitted to her that he was the Scarborough rapist

February 12, 1993

George Walker meets with Raymond Houlahan; the matter is referred to Murray Segal; after his meeting with George Walker, Raymond Houlahan meets with Inspector Bevan and other members of the Green Ribbon Task Force at which time Paul Bernardo and Karla Homolka become prime suspects in the murders

February 13, 1993

Karla Homolka meets again with George Walker and gives him instructions to seek immunity

February 14, 1993

Murray Segal and Michal Fairburn meet with George Walker and are advised of the disclosures made by Karla Homolka; a request for total immunity is refused

February 16, 1993

Jane Doe is interviewed by the police as a possible witness

February 17, 1993	Paul Bernardo is arrested
February 19, 1993	Search of 57 Bayview Drive begins; the search continues without interruption until April 30, 1993
February 22, 1993	Meeting held between Murray Segal, James Treleaven, Casey Hill, Raymond Houlahan, Deputy Chief Parkhouse and Inspector Bevan; it is agreed that a dialogue should be continued between Murray Segal and George Walker
	Search of 57 Bayview Drive discloses short video clip showing Karla Homolka committing sexual assault on an unidentified unconscious female
February 23, 1993	Murray Segal and George Walker meet and discuss the possibility of a resolution agreement
February 24, 1993	Murray Segal and George Walker have telephone conversations respecting the matter
February 25, 1993	A photograph is taken of one frame of the videotape discovered on February 22, 1993 and shown by Murray Segal to George Walker
February 26, 1993	George Walker decides that Karla Homolka must be assessed by a psychiatrist before entering into any resolution agreement
March 2 - 4, 1993	Murray Segal and George Walker have meetings and telephone conversations which result in negotiations being suspended pending the psychiatric assessment of Karla Homolka

March 3, 1993 Police interview Wendy Lutczyn and Patti Weir and learn that Karla Homolka made incriminating admissions to them

March 5, 1993 Karla Homolka is admitted to Northwestern General Hospital in Toronto under the care of Dr. Hans Arndt; the assessment takes longer than anticipated and she remains in hospital until April 23, 1993

April 1, 1993 Police interview Patricia and Calvin Seger and learn that Karla Homolka admitted to them her involvement in the murders of Leslie Mahaffy and Kristen French

April 23, 1993 Karla Homolka is discharged from the hospital and returns to her parents' home

April 30, 1993 A meeting is held between Murray Segal, Raymond Houlahan, Casey Hill, Michal Fairburn, Inspector Bevan and four other members of the Niagara police; a unanimous consensus is reached that a resolution agreement with Karla Homolka is desirable to obtain her co-operation and testimony

 Murray Segal and George Walker meet in Toronto and continue discussions respecting a resolution agreement

 Warrants to search 57 Bayview Drive expire and search ends

May 5, 1993 Murray Segal and George Walker meet in Niagara Falls; they reach a consensus on the terms of the resolution agreement; George Walker advises that he must consult with his client and her parents

	Murray Segal and Inspector Bevan meet with the Mahaffy and French families
May 6, 1993	Videotapes are removed from 57 Bayview Drive by solicitor then acting for Paul Bernardo
May 13, 1993	Murray Segal and George Walker work out the details of the resolution agreement
May 14, 1993	Resolution agreement is formally entered into by an exchange of correspondence Karla Homolka gives lengthy detailed induced statement to the police
May 15, 16, 17, 1993	Karla Homolka gives cautioned statements to the police
May 16, 1993	Police show to Karla Homolka an "out of focus" photograph of one frame of the videotape which was found on February 22, 1993
May 18, 1993	Karla Homolka is arrested on two charges of manslaughter, appears in court, waives her right to a preliminary hearing and is committed for trial Paul Bernardo is charged with the murders of Leslie Mahaffy and Kristen French
June 17, 1993	Karla Homolka visits 57 Bayview Drive with the police and points out important evidence
July 6, 1993	Karla Homolka appears for trial in the Ontario Court of Justice (General Division), pleads guilty to two charges of manslaughter and is sentenced to 12 years

September 20, 1993	Jane Doe is interviewed by the police for the second time
October 6, 1993	Karla Homolka writes to George Walker in respect to Jane Doe; with his client's permission, that letter is later provided by George Walker to the police
December 6, 1993	During a police visit to her on other matters, Karla Homolka discloses her recollection of a sexual assault on Jane Doe and tells of making the 911 calls
February 2, 1994	Police interview Karla Homolka re Jane Doe; she gives details of the incident
February 12, 1994	Police interview Jane Doe for the third time
February - March, 1994	Raymond Houlahan and Gregory Barnett interview Karla Homolka in preparation for the preliminary hearing; the interviews extend over approximately five weeks
February 25, 1994	Karla Homolka's divorce becomes final
March 28, 1994	Police interview Jane Doe for the fourth time
March 30, 1994	The Attorney General prefers indictment against Paul Bernardo for the murders
April 4, 1994	Preliminary hearing for Paul Bernardo had been fixed for this date, but is cancelled because of the preferred indictment
May 2, 1994	Attorney General prefers indictments against Paul Bernardo for the Scarborough rapes, for manslaughter respecting Tammy Homolka and for sexual assaults on Jane Doe and another victim

May 4, 1994	Trial of Paul Bernardo on the murder and related charges begins in the Ontario Court of Justice (General Division), presided over by Associate Chief Justice LeSage
May 30, 1994	Defence counsel commence cross-examination of Karla Homolka at Kingston; this cross-examination continues intermittently during the months of June and July, 1994
Spring and Summer, 1994	Various motions are heard by the Trial Judge
September 12, 1994	Defence counsel apply to the Trial Judge to be allowed to withdraw from the case; their application is granted; defence counsel are later replaced by John Rosen and Anthony Bryant
September 22, 1994	Missing videotapes are delivered to the police
September 28, 1994	Videotapes are reviewed in detail; the assaults by Paul Bernardo and Karla Homolka are seen on the videotapes
October 6, 1994	Police review in detail the videotapes showing the sexual assaults by Paul Bernardo and Karla Homolka upon Jane Doe
October 21, 1994	Meeting of Jane Doe and her mother with Mary Hall and police at which time they are told about the assault on Jane Doe
November 17, 1994	Chief Justice LeSage fixes May 1, 1995 as the date upon which jury selection will commence
December 2, 1994	Inspector Bevan asks Raymond Houlahan whether the Crown is contemplating laying charges against Karla Homolka respecting Jane Doe

January 9, 1995	A meeting is held between Murray Segal, Raymond Houlahan, Inspector Bevan and Acting Inspector Warr; they discuss the need for further investigation respecting Jane Doe
February, 1995	Dennis O'Connor and Freya Kristjanson are retained by the family of Jane Doe
February 6, 1995	Mary Hall resigns as prosecutor of the sexual assault cases; she is eventually replaced by Leslie Baldwin
February 8, 1995	Murray Segal advises George Walker that the police may seek advice as to possible criminal charges against Karla Homolka respecting Jane Doe
February 20, 1995	Police interview Karla Homolka in respect to the Jane Doe assault; she is shown the relevant videotape
March 20 - 23, 1995	Paul Bernardo's counsel asks Jane Doe's solicitors whether a private prosecution will be launched against Karla Homolka
March 30, 1995	Meeting between trial prosecutors and senior investigators; discussions respecting whether charges respecting Jane Doe should be laid against Karla Homolka
April 3, 1995	Defence counsel asks Inspector Bevan when Karla Homolka is going to be charged respecting Jane Doe
April 14, 1995	Inspector Bevan writes to James Treleaven seeking advice respecting charges against Karla Homolka for offences committed against Jane Doe

April 21, 1995	Meeting of Michael Code, James Treleaven, Leo McGuigan, Jerome Wiley, Murray Segal, Inspector Bevan and Acting Inspector Warr to discuss possible charges against Karla Homolka; decision deferred pending further investigation and the obtaining of the views of Jane Doe and her parents
May 1, 1995	The jury selection portion of Paul Bernardo's trial begins
May 18, 1995	Meeting of Michael Code, James Treleaven, Jerome Wiley and Leo McGuigan; George Walker makes representations; a decision is taken that it is not in the public interest to lay charges against Karla Homolka respecting the offences committed against Jane Doe
May 26, 1995	James Treleaven writes to the Green Ribbon Task Force advising that charges should not be laid against Karla Homolka and gives the reasons for that advice
June 15, 1995	James Treleaven writes to George Walker advising that Karla Homolka will not be charged respecting Jane Doe
June 19, 1995	Karla Homolka's testimony at Paul Bernardo's trial begins; it continues until July 14, 1995
September 1, 1995	Paul Bernardo is convicted of two counts of first degree murder and related offences; he is sentenced to life imprisonment without eligibility for parole for 25 years
November 3, 1995	Paul Bernardo is found to be a dangerous offender and is sentenced to be detained in a penitentiary for an indefinite period of time



Ontario

Exchange of Correspondence setting out the
Resolution Agreement of May 14, 1993

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acteur

Ministry of
the Attorney
General

Ministère
du Procureur
général

Crown Law Office
Criminal

Bureau des avocats
de la Couronne
Droit criminel

10th Floor
720 Bay Street
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May 14, 1993

(416) 326-23

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(416) 326-46

Mr. George F. Walker, Q.C.
Barrister and Solicitor
4786 Queen Street
Box 868
Niagara Falls, Ontario
L2E 6V6

Dear Sir:

I am writing to confirm our mutual understanding respecting a proposed resolution as between the Crown and Karla Bernardo. It has been arrived at after lengthy discussions. If you are in agreement I would be obliged if you would confirm same in writing.

As I understand it, your client, after receiving legal advice, has chosen to engage in a process that may lead to a resolution of certain investigations in her case. Your client's position is that she is permanently estranged from her husband with no interest nor prospect of reconciliation. She has received legal advice regarding spousal immunity and is prepared to speak to the police and to testify regarding certain matters as described below.

The outline of the proposed resolution is that your client will provide an induced statement. If the authorities are satisfied at that stage, she will provide cautioned statements. At that point your client will be charged, waive the preliminary inquiry, plead guilty, and be sentenced to twelve years imprisonment, subject to a

judge's approval. I have now had the opportunity to discuss, in general terms, the proposed resolution with the families of the victims. I am totally satisfied that there exists admissible evidence respecting your client's involvement in the crimes for which pleas will be entered. I am in a position to proceed with the proposed resolution. The following represents the terms of our understanding.

(A) Induced Statement

1. Your client will attend upon the police.
2. The induced statement will not be used against her in any criminal proceedings.
3. She will give permission for audio and video taping.
4. It will be forthright and truthful. It will be complete, bearing in mind it is an initial statement.
5. No assurances can or will be given respecting derivative evidence.
6. Upon completion, the Crown and the police will assess it to determine whether they are satisfied that it has been given in a forthright and truthful manner.
7. The police may decide that a second induced statement is required if insufficient time is set aside for the initial one.
8. If the authorities learn through any means that your client has caused the death of any person, in the sense of her stopping life, any proposed resolution will be terminated at the suit of the Crown, regardless of the state the process is at.
9. If any of the above matters are not to the satisfaction of the Crown, resolution discussions will be terminated and if no cautioned statement has been taken, the induced statement will not be used against her.
10. The statement and any subsequent statement will be a full, complete, and truthful account regarding her knowledge and/or involvement or anyone else's involvement in the investigations to the deaths of Leslie Mahaffy; Kristen French; alleged rapes in Scarborough; alleged rape on Henley Island; the death of Tammy Homolka; and any other criminal activity she has participated in or has knowledge of.

(B) Cautioned Statement(s)

1. They will be under caution.
2. They will be under oath.
3. Permission will be granted to audio and video tape.
4. They will provide no protection for a prosecution if it is discovered that she lied, including a prosecution for obstruct justice, public mischief, fabricating evidence, perjury, inconsistent statements and/or false affidavits.
5. The video taped statement(s) will be used at any criminal proceeding if she recants, or if the Crown otherwise tenders them, or if a judge permits their use.
6. They will be complete, full, and forthright.
7. She shall fairly set out the roles or knowledge of all parties and witnesses to the crimes under investigation, including her role and knowledge.

(C) Other Assistance

1. She will provide all reasonable and lawful assistance in permitting the police to recover real evidence, and providing written authority to police to recover real evidence relevant to their inquiries. She will assist the police in their inquiries relating to any real evidence in relation to anyone who is associated with the crimes under investigation.
2. She will voluntarily provide fingerprints, handwriting, hair and blood samples, and like matters.
3. She will provide a witnessed, written consent to the seizure of all items from 57 Bayview Drive, St. Catharines from February 19 to April 30, 1993, and such other consents respecting real evidence and information as may be requested by the Crown.

(D) Charge, Plea, and Sentencing

1. Upon conclusion of the receipt of voluntary cautioned statements at such time as the police require, she will be charged.

2. She will be charged with two counts of manslaughter in relation to the Mahaffy and French homicides. The defence will consent to the reading in of facts of any other crimes as the Crown deems appropriate, the sentence of twelve years and twelve years concurrent taking into account any such additional matters.
3. She shall waive the preliminary inquiry when the Crown deems appropriate.
4. An indictment shall be presented.
5. A joint submission shall be made for a total sentence of twelve years, comprised of two terms of twelve years concurrent with each other. A s.100 weapons order will be requested.
6. It is not the intention of the Crown to seek an increase in parole eligibility, given all the circumstances of these matters, including the total sentence that will be sought.
7. The Crown is prepared to agree that your client be remanded out of custody, subject to the court's approval, for three weeks, but on satisfactory sureties and in an amount exceeding \$100,000, and with such conditions as the Crown may require pending sentence.
8. The acceptance of the pleas of guilty, the charges, the sentences, the period of parole ineligibility, and remand out of custody pending sentence are subject to acceptance by the trial judge.
9. A refusal by a judge to accept the charges upon which pleas are to be entered, or the proposed sentences, will result in a trial being held on whatever charges the police and the Crown deem appropriate. In such circumstances, the admissibility of the cautioned statements is not affected.
10. The Crown's position on sentencing of twelve years, and no less, will take into account any assistance given and proposed, the early pleas, and like factors. The Crown may read in such facts as the Crown deems fit. The Crown is prepared to receive any reasonable suggestion respecting such facts. The Crown will fairly describe to the court the effect that the pleas and assistance will and may have respecting all participants in the crimes.
11. Her counsel will voluntarily provide at the first opportunity to Crown counsel, an opportunity to inspect a copy of any psychiatric, psychological, or other medical reports.

12. The Crown will in its discretion, supported by the defence, and subject to the approval of a judge, tender victim impact statements and related material, and/or move to call the parents of the victims at the sentencing hearing.

(E) Post-Sentencing Matters

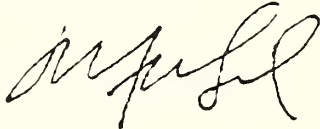
1. Your client need provide sworn testimony in any and all proceedings to which she is subpoenaed by the Crown arising from her cautioned statements and she will tell the truth.
2. The Crown, on behalf of the police, is prepared to write to Correctional Services Canada and/or the Parole Board, attaching a full transcript of all proceedings and making full reference to any assistance offered and received in relation to interviews, testimony, and like matters, all of which will be for the exercise of the discretion of Correctional Services Canada and/or the Parole Board. In the event the accused applies for transfer for purposes of psychiatric treatment while in custody, the Crown and the police will leave such matters to the discretion of Correctional Services Canada and/or the Parole Board.
3. Neither the Crown nor the police will make any other warranties respecting post-sentence custody or parole and like matters. The Crown and the police agree that such issues will be in the discretion of Correctional Services Canada and/or the Parole Board.
4. While in custody, she will continue to fully assist the authorities.
5. If released prior to the termination of all trials involving others implicated in the investigated crimes she will make herself available to be fully interviewed and to testify as required.
6. If the sentencing judge imposes a sentence greater than twelve years, nothing prevents the defence from appealing against sentence to seek a reduction to twelve years.
7. The Crown is prepared to confirm any aspect of this agreement to a court or any government agency for the purposes of carrying out what is contained in this agreement.

(F) Other Matters

1. She will not give an account directly or indirectly to the press, media, or for the purpose of any book, movie, or like endeavour.
2. She will not seek or receive, directly or indirectly, any compensation relating to the above, including any and all events and occurrences arising from the police investigations, criminal proceedings, or any statements given by her to the police.

Thank you.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'M. Segal', written in a cursive style.

Murray D. Segal
Director

GEORGE F. WALKER, Q.C.
BARRISTER AT LAW

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May 14th, 1993

Ministry of the Attorney General
Crown Law Office - criminal
10th Floor
720 Bay Street
Toronto, Ontario
M5G 2K1

Attention: Murray D. Segal, Director

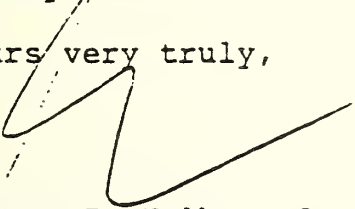
Dear Sir:

Re: Regina v. Karla Homolka-Bernardo

This is to confirm receipt and review of your letter of May 14th, 1993 which accurately outlines and confirms our mutual understanding respecting the proposed resolution of all matters between the Crown and my client.

This is to further confirm that the family and the client are in full agreement that we are to proceed as outlined in your letter of May 14th, 1993.

Yours very truly,



George F. Walker, Q. C.
/lw

APPENDIX "D"Relevant Portions of Proceedings in the
Ontario Court of Justice (General Division)
on July 6, 1993

No. 125/93

ONTARIO COURT (GENERAL DIVISION)

HER MAJESTY THE QUEEN

against

KARLA BERNARDO ALSO KNOWN AS KARLA TEALE

P R O C E E D I N G S A T T R I A LBEFORE THE HONOURABLE MR. JUSTICE F.J. KOVACS,
on July 6, 1993, at St. Catharines, Ontario.

CHARGE: S. 236 C.C. - Manslaughter x 2

APPEARANCES:

M. D. Segal, Esq.

Counsel for the Crown

Ms. M. Fairburn

Counsel for the Crown

G. Walker, Esq.

Counsel for the accused

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Transcript Ordered: ...*T. Dav.*...*20/95*.....
Transcript Completed: ..*T. Dav.*...*20/95*.....
Counsel Notified: ...*T. Dav.*...*20/95*.....

HIS HONOUR: Thank you, Mr. Segal. Mr. Walker, is the accused ready for her arraignment?

MR. WALKER: Yes.

HIS HONOUR: Arraign the accused, please.

CLERK OF THE COURT: Mr. Walker, is that the accused, Karla Bernardo, also known as Karla Teale, standing next to you?

MR. WALKER: It is.

CLERK OF THE COURT: You stand indicted by the name of Karla Bernardo, also known as Karla Teale as follows: Karla Bernardo, also known as Karla Teale stands charged that on or between the 14th day of June, 1991 and the 29th day of June, 1991, inclusive, at the City of St. Catharines in the Regional Municipality of Niagara, did unlawfully kill Leslie Erin Mahaffy and thereby commit manslaughter, contrary to the provisions of Section 236 of the Criminal Code of Canada.

On count one of this indictment, how do you plead, guilty or not guilty?

THE ACCUSED: Guilty.

CLERK OF THE COURT: You also stand charged that between the 16th day of April, 1992 and the 30th day of April, 1992, inclusive, at the City of St. Catharines in the Regional Municipality of Niagara, did unlawfully kill Kristen Dawn French and thereby commit manslaughter, contrary to the provisions of Section 236 of the Criminal Code of Canada.

On count two of this indictment, how do you plead,
guilty or not guilty?

THE ACCUSED: Guilty.

CLERK OF THE COURT: Harken to your plea, the
Court has recorded it, you plead guilty to count
one and guilty to count two?

MR. WALKER: She does.

HIS HONOUR: May I have the indictment please?
Thank you. Mr. Segal.

NOTE: From here until page 12
there were discussions
concerning the publication
ban.

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10
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MR. SEGAL: All right, at this stage Your Honour, with leave of the Court, the Crown proposes to put before the Court, the facts that in the Crown's estimation, would support the plea at these proceedings. If I may proceed in that respect. I have prepared some notes for, for my own use and it may be more convenient that, that - to, to save hearing me and I understand my voice drops from time to time.

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HIS HONOUR: I might say to the members of the press that what counsel has given me now, is not a part of the public record. It will not be in the court file. What the Crown has done is, I presume I am correct on this, has outlined what he is going to say, but in outline form, and it is merely an aid to the judge to be able to follow his reasoning, or in his comments.

MR. SEGAL: If I may proceed then, Your Honour. Leslie Erin Mahaffy of Burlington, Ontario was 14 at the time of her death. She is the daughter of Robert and Debbie Mahaffy. She is also survived by her brother, Ryan, now age nine. Leslie attended MM Robinson High School in Burlington. She was in grade nine at the time of these events. Kristen French of St. Catharines was 15 at the time of her death. She is the daughter of Doug and Donna French. Kristen is survived by a brother Darren, 20, and older half siblings Pamela, Bradley, Dwayne and Brian. Kristen attended Holy Cross Secondary School in St. Catharines. She was in grade ten at the time of these events. Both young women were vibrant, active, popular, loved and loving children. They were totally innocent victims to predatory conduct and had the misfortune of being in the wrong place at the wrong time. The accused, Karla Bernardo, also known as Karla Teale, appears before the Court charged with two counts of manslaughter. In addition, to those two charges, Your Honour will hear facts, read in on the consent of the accused, surrounding her criminal liability in the death of her younger sister Tammy Homolka. In this respect, the Crown will be relying on the decisions of the Ontario Court of Appeal in R. v. Garcia and Silva, reported at [1970] 3 C.C.C. 124 and R. v. Robinson (1979), 49 C.C.C. (2d) at 464. HIS HONOUR: Excuse me for a moment.

MR. SEGAL: I have, I have - I have prepared a case book which includes those two leading sources for Your Honour's convenience.

HIS HONOUR: Thank you.

MR. SEGAL: Pursuant to the principle raised in these cases the Crown will ask Your Honour to take into consideration the accused's admissions respecting the death of Tammy Homolka in imposing her total sentence on the indictment and the Crown will agree not to proceed to further prosecute her respecting that matter on what she has told the police.

The accused is now 23. She met her husband, Paul Bernardo, also known as Paul Teale, now age 29, in 1987. They were engaged on December 25, 1989. The couple was married on June 29, 1991. Sometime prior to the marriage, Karla Bernardo was subjected to verbal and physical abuse by her future husband. This was a pattern that would continue and escalate throughout their relationship.

Turning now to the death of Tammy Homolka.

Karla Bernardo, then Karla Homolka, had a sister Tammy, age 15 when she died. Tammy was attending grade nine at Sir Winston Churchill High School. Tammy too was a young innocent girl who had her entire life before her and brought great joy to her family.

Some months prior to Christmas, 1990, Paul Bernardo had approached Karla indicating his interest in having sexual relations with Tammy. The request was repeated a number of times. Karla said no but eventually relented after abuse.

Karla had been employed since approximately December 1989 at animal clinics. I believe September is the correct starting date.

She was asked by Paul Bernardo and agreed to obtain sleeping pills to use on her sister. She used a local pharmacy for the pills saying they were for the clinic's use when they were not. As well, she brought home an inhalant anaesthetic from the clinic to use on Tammy. Her husband told Karla that he wanted Tammy as a Christmas present. On December 24, 1990, Paul Bernardo and Karla Bernardo were at the home of Karla's parents. Upstairs were Karla's parents and Karla's sister Lori, now age 22. The parents and Lori went to sleep.

Tammy wanted to watch a movie with her older sister and Paul. The three of them went downstairs to watch the movie. Paul Bernardo placed a number of sleeping pills in alcoholic drinks which Karla Bernardo prepared and served to put Tammy to sleep. This had been pre-arranged with Karla Bernardo. Karla Bernardo had requested that no more than five pills be placed in the initial drink. More pills were used when the initial dosage did not seem to have the desired effect.

Tammy eventually passed out. At Paul's request Karla confirmed that Tammy was asleep by prodding her. The victim was undressed by Paul. Karla applied an anaesthetic to a cloth and intermittently held it to or near Tammy's face so that Tammy did not wake up. Karla Bernardo monitored her sister's breathing.

5 Paul Bernardo had vaginal and anal sex with Tammy. A video was taken. Karla Bernardo operated the camera. Karla then was asked and did perform oral sex on her sister. Paul held the camera. Paul Bernardo then resumed sex with Tammy and eventually he stopped.

10 Tammy Homolka began to vomit and turn blue. She choked on her vomit and stopped breathing. Immediate attempts to resuscitate her were unsuccessful. She was dragged to Karla's bedroom which was also located downstairs.

15 Paul Bernardo gave mouth to mouth. Karla called 911. Karla Bernardo hid the pills, and dumped the anaesthetic down the drain. Tammy was dressed. The video was hidden.

20 The Homolka family was distraught upon hearing the commotion and discovering Tammy's condition. Tammy was taken by ambulance to hospital. Attempts to bring her back to life were unsuccessful.

25 Karla and Paul Bernardo lied to the ambulance attendants and the attending police. No mention was made of the highly dangerous drugs and sex. The death was ruled accidental. A preliminary screen for drugs by the coroner did not uncover the specialized drugs that had been administered.

30 Tammy is survived by the accused, another sister Lori and parents, Dorothy and Karel Homolka. Until recently, the Crown believes that the family never knew the sad truth surrounding their youngest child's death.

Following Tammy's death, Karla would say that her future husband used that terrible secret to extort

5 her. She was told that her parents would be informed of the truth surrounding Tammy's death. She was threatened with bodily harm and death. She was told that harm would come to her family. The physical and verbal abuse continued.

Over time, Paul Bernardo told his wife he wanted to obtain a sex slave, preferably a young girl.

10 Karla and Paul Bernardo rented a house in Port Dalhousie. They moved in prior to marriage during February of 1991.

I'll now turn to the events surrounding the death of Leslie Mahaffy.

15 In June of 1991, Paul Bernardo went out one night and in the early morning hours of June 15, 1991, Paul Bernardo abducted Leslie Mahaffy, age 14, by luring her into his car.

20 He brought her home. Karla was sleeping. She was awakened. He told his wife what he had done - that he had a girl in the house. Karla Bernardo was told to remain quiet so that Leslie Mahaffy would not know anyone else was in the house. Karla went back to sleep.

Karla Bernardo got up the next day. Karla Bernardo avoided her husband who had locked himself in a room with Leslie Mahaffy.

25 Karla Bernardo met Leslie Mahaffy later that day. Leslie Mahaffy was blindfolded. Paul Bernardo asked Leslie Mahaffy how she would feel about sex with a third person. Leslie Mahaffy was extremely upset but appeared to be somewhat relieved to find out that the third person was a woman - Karla Bernardo. Leslie Mahaffy had been plied with

30

liquor and pills. Karla Bernardo prepared additional drinks. Karla Bernardo was curious about Leslie Mahaffy's background and asked her many personal questions by whispering them to her husband who would repeat them. Karla Bernardo did not want Leslie Mahaffy to hear her voice. Karla Bernardo prepared food for Leslie Mahaffy. Leslie Mahaffy was violently and repeatedly used as a sexual object by Paul Bernardo. Karla Bernardo participated in oral sex. Videotaping occurred. Karla Bernardo did the videotaping while Paul Bernardo was sexually assaulting Leslie Mahaffy. Leslie Mahaffy was violently and repeatedly beaten by Paul Bernardo in Karla Bernardo's presence. After several hours, Paul Bernardo decided to kill Leslie Mahaffy by strangulation. Paul Bernardo expressed concern to Karla that Leslie Mahaffy could identify them. They discussed that Leslie's death was the alternative to going to jail for the couple. In Karla's presence, Paul Bernardo told Leslie Mahaffy that she was going to die. Karla Bernardo suggested that Leslie Mahaffy be given sleeping pills to ease death. Karla Bernardo gave Leslie Mahaffy a teddy bear in an effort to comfort Leslie Mahaffy. Leslie Mahaffy was extremely frightened. Leslie only wanted to see her little brother again. Paul Bernardo strangled Leslie Mahaffy with a cord in Karla's presence. The Bernardo's were shocked to discover Leslie Mahaffy gurgling, so Paul Bernardo strangled her a second time in Karla Bernardo's presence. This time he succeeded.

Leslie Mahaffy's body was stored in their root cellar in case visitors came over. The Bernardo's discussed disposing of the body. Paul Bernardo suggested that concrete be used. It was discussed that Lake Gibson be used for a hiding place. On Monday, Karla went to work at the clinic. Later that day she learned that Paul Bernardo had dismembered Leslie Mahaffy and placed her in concrete blocks. Several trips were necessary to dispose of the blocks. Karla Bernardo had to help her husband carry the heaviest block to the car, that being the one that contained Leslie Mahaffy's torso. Karla Bernardo joined her husband on two occasions to dispose of blocks in the lake. On June 29, 1991, as the Bernardo's were celebrating their wedding and on the plane to Hawaii for their honeymoon the blocks were discovered because the water level on Lake Gibson had been lowered. By the time the couple was married, Karla Bernardo had been told by her husband that he had raped numerous women. Following Leslie Mahaffy's death, Karla Bernardo accompanied her husband as he prowled in his car in search of women. She was brought along for cover in case the police stopped him. Her mistreatment at his hands continued. Karla Bernardo acceded to her husband's demands and found young female friends to help satisfy Paul Bernardo's urges. If I could now turn to the events surrounding the death of Kristen French.

The Bernardo's discussed abducting another young woman and developed a plan.

On April 16, 1992, Karla Bernardo accompanied Paul Bernardo to find a young woman.

They spotted Kristen French, age 15, who was unknown to them.

As pre-arranged Karla Bernardo enticed Kristen French over to their car on the pretext of asking directions. Karla Bernardo held a map up as part of her role-playing.

Paul Bernardo came around the car and forced Kristen French into the vehicle with a knife. Kristen French suffered a small knife wound in the process.

Karla Bernardo jumped in the back of the car. Paul Bernardo drove holding a knife and threatening Kristen French. Karla Bernardo grabbed a hold of Kristen's hair to help secure her. As pre-arranged, Karla placed a blanket over Kristen on the way home.

They drove to the Bernardo's home. Karla Bernardo opened the garage door. Kristen French was brought in. Karla Bernardo closed all the blinds and collected and hid all the telephones in the house. Karla was told to stay downstairs while Paul Bernardo had his way with Kristen French. Sleeping pills appear to have been used. Kristen French was forced to drink alcohol. Karla Bernardo had suggested that drugs not be used on Kristen to prevent the police from making the connection between the crimes. Kristen was also unlawfully confined and sexually brutalized. Karla Bernardo

5 joined in the sex. Kristen French was beaten savagely by Paul Bernardo. This conduct was repeated over the course of a few days while Karla Bernardo was present. Karla asked Kristen French many personal questions. Paul Bernardo made Kristen French and Karla Bernardo jointly play out sexual fantasies of the Bernardos. Karla Bernardo prepared food for Kristen French.

10 The video taping of Kristen French occurred. Each Bernardo took turns operating the camera while the other sexually assaulted Kristen French.

15 On two occasions over the next few days, Paul Bernardo left the house to obtain take-out food. He bound and hand cuffed Kristen French. She was placed in a closet. Karla Bernardo was asked to stand guard and was given a rubber mallet to strike Kristen should she attempt to escape.

20 Karla Bernardo thought about freeing Kristen French but did not out of fear of being beaten by her husband and being found out by the police.

25 Kristen French became defiant saying that some things were worth dying for. This caused her to be beaten by Paul Bernardo even more. As well, and in response, she was shown a video by Paul Bernardo of Leslie Mahaffy's confinement. Karla was present throughout.

Eventually, Paul Bernardo strangled Kristen French with a cord in Karla Bernardo's presence.

30 Using gloves, the Bernardo's washed Kristen French extensively in their jacuzzi. A douche, which had been purchased for the purpose of using on a victim, was used. At Paul Bernardo's suggestion,

Kristen French's hair was cut by Karla to avoid carpet or other fibres being found.

The couple placed Kristen French in their car and found a ditch where she was placed. Paul Bernardo covered the body with branches. The burial spot was 300 yards from Leslie Mahaffy's final resting place.

The couple went to great efforts to eliminate traces of their crimes. Karla Bernardo washed down walls, and wiped the car for prints, finger prints. She vacuumed the car. She vacuumed the house incessantly. The contents of vacuum bags, and the victim's clothing were burnt. The gloves worn by the Bernardo's and the cardboard boxes used to help form the concrete blocks were all burned.

Paul Bernardo raised with his wife the prospect of securing other young woman, even younger than Leslie Mahaffy and Kristen French.

During marriage her husband continued to rape women outside the home to the knowledge of Karla Bernardo.

In the months following Kristen French's death, Karla Bernardo's physical abuse continued and escalated. Karla Bernardo thought that she would be the next to die. She was locked in their home's root cellar. In early 1993, she tried unsuccessfully to find the incriminating video tapes to destroy them. In January, 1993, as the result of a severe beating, Paul Bernardo was charged with assault with a weapon. Her injuries were so visible that they came to the attention of the police. Karla Bernardo moved out and the

police moved in.

In a case with such gruesome conduct, certain questions naturally arise. I can indicate to the Court that I am aware that Karla Bernardo has received extensive legal advice, and has been thoroughly assessed by health professionals retained by the defence. To that end, counsel are satisfied to indicate, subject to my learned friend's agreement, that the following matters are not in issue.

- Karla Bernardo is fit to stand trial
- Mental disorder within the meaning of s.16 of the Criminal Code has been ruled out
- The accused is aware of the charges and the consequences of her pleas
- Drug consumption by the accused is not a factor in these crimes
- Alcohol is not a factor which would cast doubt on her liability for these crimes
- Compulsion by threats is not relevant for purposes of her criminal liability
- As will be expanded on by the Crown, the Crown is satisfied that Karla Bernardo had the necessary intent and involvement to found murder charges, based on the information the police have received from her, and subject to a jury finding her guilty, but as a matter of prosecutorial discretion, you have before you manslaughter charges which the Crown, with full input from the police and after consultation with the families of Leslie Mahaffy and Kristen French, is prepared to accept

5 - These are the facts that the Crown places before the Court in relation to the two charges of manslaughter and in relation to her criminal culpability respecting her sister.

HIS HONOUR: Thank you, Mr. Segal. Mr. Walker, is there any question that Karla Bernardo is fit to stand trial?

10 MR. WALKER: There is no such suggestion, Your Honour. She is fit to stand trial. I've canvassed extensively the section, possible s.16 defence. The accused is aware of the charges and the consequences of her pleas. I might add that the accused and her family have been actively involved in a series of discussions, which has led to today's proceedings. Drug consumption by the accused is not a factor in these crimes. Alcohol, although present, is not a factor, which would cast doubt on her liability for these crimes.

15 Compulsion by threats is not relevant for purposes of her criminal liability. And, I will make some comments later on with regard to the discussions I've had with the Attorney General's office.

20 HIS HONOUR: Do any of the members of the family want a break, or would you like to just get it over with? Would you like a break or get it over with? We will break, certainly. Is there a special place for the families?

25 MR. SEGAL: Your Honour, the police have been very helpful, with the Court's Administration staff. There are arrangements in place, so that the families are permitted to retire in dignity.

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HIS HONOUR: I just do not want them in the cell area. I think that I am going to ask that the French family may use my office. The Mahaffy family may use Justice Gravely's office, which I shall open and the Homolka family may use the pre-trial room. Sorry?

MR. WALKER: They've been using that Jury Room.

HIS HONOUR: Who, the Homolka family?

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MR. WALKER: Yes.

HIS HONOUR: Fine, they will use the Jury Room. I shall break and when you are ready to proceed, let me know and the Court Services Officer beside me will take you to those halls, through this door.

15
R E C E S S

(11:20 a.m.)

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NOTE: The Court dealt with a question from a member of the press concerning the publication ban.

HIS HONOUR: Mr. Walker, are the facts accepted by the accused?

MR. WALKER: You are anticipating my next submission. I've had a chance to review the matters and, with my client, and indeed the facts as read in by Mr. Segal on behalf of the Attorney General were, were accurate and admitted to by my client.

HIS HONOUR: Thank you.

MR. WALKER: One other matter as we ...

HIS HONOUR: Just a moment. I register a conviction.

MR. WALKER: Fine.

HIS HONOUR: Forgive me, at my age if I do not do it immediately, I may not do it. Mr. Walker, some day you will get there.

MR. WALKER: I hope not, Your Honour. Some days I feel like I'm already there.

HIS HONOUR: You would not forget if it was reported every night how old you were, immediately after your name.

MR. WALKER: Well, I lost ten years, I guess.

HIS HONOUR: A conviction is registered on count one and on count two.

MR. WALKER: Thank you, Your Honour.

HIS HONOUR: Thank you.

5 MR. WALKER: Your Honour, I propose to file now with the Court, the bound volume of sentencing materials. I will be asking that those be sealed at a later point in time, that this volume be sealed. I would like it made an exhibit, and I think under Vickery it'll make it a lot easier to deal with.

CLERK OF THE COURT: Exhibit six.

MR. WALKER: I will ...

10 HIS HONOUR: I think that perhaps what we should do, Madame Clerk ...

MR. WALKER: I will draw your - I'm sorry.

HIS HONOUR: Excuse me for one moment. Call it exhibit one, because the other exhibits were on the application, this is on the trial proper.

15 EXHIBIT NUMBER ONE: Bound Volume of Sentencing Materials submitted by Mr. Walker.

- Produced and marked.

HIS HONOUR: Sorry, Mr. Walker.

20 MR. WALKER: I refer you to the index page. I refer you to the index page for the contents of the, the exhibit, and I've given my friend a copy of it this morning. I will be making reference to the various psychological and psychiatric assessments which are contained in the report at a later point in time. But, I felt you might want them now. I will be making reference to, specific reference to the reports as well as tab six, later on.

25 HIS HONOUR: Mr. Segal.

30 MR. SEGAL: I could indicate to the Court that the, the evidence that the Crown would call on, on these sentencing proceedings will come from

5 representatives of the victim's families, who have prepared victim impact statements. I would seek leave that, that representatives of the families, a representative from each family have the opportunity to, to read the documents that they have prepared, and in addition of course, I would offer to the Court a copy to - as, as an exhibit as, as well. That would be the extent of the Crown's evidence on the sentencing proceeding.

10 HIS HONOUR: Would you like to do that now, Mr. Segal?

MR. SEGAL: Yes, thank you very much.

HIS HONOUR: I give you leave.

15 MR. SEGAL: If, if I could call forward Mrs. Debbie Mahaffy.

HIS HONOUR: Mrs. Mahaffy, if it is more convenient to you, you can either stand at the lectern.

20 MRS. MAHAFFY: No, I think I'll sit down.

HIS HONOUR: Or if you prefer, you may come to the witness stand.

MRS. MAHAFFY: Okay.

25 HIS HONOUR: Or if you like, you may sit at one of the counsel chairs. I suppose teachers are accustomed to - are you a teacher?

MRS. MAHAFFY: Yes, I was.

HIS HONOUR: Are accustomed to facing people a little more easily.

MRS. MAHAFFY: Not under these circumstances, I guess.

30 MR. SEGAL: Your Honour, I ...

MR. WALKER: I don't require her to be sworn. I

don't know what Your Honour's position is. That's not necessary.

MR. SEGAL: I have a, I have a copy of the outline of the victim impact statement for Your Honour to follow along with. It's a booklet containing impact - victim impact statements from the Mahaffy and French families, and as well, provide one to the reporter to, to follow along in her transcription.

HIS HONOUR: Would you give Mrs. Mahaffy a glass of water please, in case she needs it.

MRS. MAHAFFY: Yes, thank you.

HIS HONOUR: Fine, Mrs. Mahaffy, just proceed at your own pace.

MRS. MAHAFFY: Okay.

HIS HONOUR: And let me know if you need a break.

NOTE: From here until page 44
Mrs. Mahaffy gave her oral
victim impact statement.

Mrs. Debbie Mahaffy
Mrs. Donna French

EXHIBIT NUMBER TWO: Victim Impact Statement given
by Mrs. Mahaffy.

- Produced and marked.

MR. SEGAL: I'd like to now call Mrs. French
forward.

HIS HONOUR: No one will leave the courtroom while
Mrs. French is giving her statement. Mrs. French,
where do you prefer to be?

NOTE: From here until page 55
Mrs. French gave her oral
victim impact statement.

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EXHIBIT NUMBER THREE: Victim Impact Statement
given by Mrs. French.

25 - Produced and marked.

HIS HONOUR: I order that there be no publication
of the Victim Impact Statement of Mrs. French. It
is an order with no time limit. Under the
authority of the Vickery case, I order that her
Victim Impact Statement, exhibit three, be sealed.
30 Is this a good time for us to break, Mr. Segal?

MR. SEGAL: Yes, Your Honour.

HIS HONOUR: What is your convenience? Do any of the victims want to go home or do anything like that? Would it be more convenient for you for 2:30 or 2:15?

MR. WALKER: I'm just wondering ...

HIS HONOUR: Yes?

MR. WALKER: I just wonder if an hour, perhaps 2:15.

HIS HONOUR: All right. We will adjourn until 2:15.

R E C E S S

(1:09 p.m.)

NOTE: From here until page 60 there were discussions concerning the publication ban.

5 MR. SEGAL: We are at the stage of the proceedings where counsel I believe, are in a position to make submissions to Your Honour, and I am prepared to, to start.

HIS HONOUR: Thank you.

10 MR. SEGAL: I've just handed up my speaking notes for you and the reporter's assistance and I've provided my friend, Mr. Walker, with a copy of this earlier today.

May it please Your Honour.

15 You will hear that both the Crown and the defence will jointly submit that the sentence for Karla Bernardo should be one of twelve years in the penitentiary on each manslaughter count, concurrent to one another, and a lifetime ban on possession of weapons and like material.

20 A joint submission is of course only a submission and Your Honour retains the discretion to accept or not such submission based on the facts, the evidence tendered and the submissions here today. It will be counsel's position that such a sentence strikes the difficult balance that this case, this conduct and this accused presents.

I would like to make some comments regarding the procedure in this case.

25 Firstly, with respect to the manslaughter charges that are before the Court.

Your Honour has before you an indictment charging the accused with manslaughter.

30 I have stated and I will state again that it is the position of the Crown that murder charges could be laid, based on what this accused has provided to

5 the authorities, subject to a trier of fact's findings, that after a trial on charges of murder. However, as a matter of prosecutorial discretion the Crown has presented an indictment charging manslaughter.

In this respect the Crown has taken into consideration the accused's past and future assistance.

10 The facts read in are necessarily abbreviated given that this a guilty plea and that a party to the offences is yet to be tried. Notwithstanding those factors, the facts read in are painfully gruesome. In that regard it is noted that but for this accused informing the police of such details, the totality of the facts may never have been known. In presenting manslaughter charges the Crown has also considered her admission that she did not personally cause death in the sense of stopping the breath of Leslie Mahaffy and Kristen French, yet at the same time the accused contributed to their deaths by aiding, by supporting, by condoning, by callously observing as these young women met those violent deaths.

20 Ultimately the Crown's decision to accept manslaughter pleas represents a balancing of several aggravating and mitigating factors, many of which are relevant to the actual sentence itself and the Crown's best determination, after receiving the full input of the police and after consulting with the victim's families, of what would be consistent with the public interest.

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5 Your Honour has been presented with the facts surrounding this accused's criminal culpability respecting the death of Tammy Homolka. Your Honour was asked to invoke the principle in R. v. Garcia and Silva. And, as Your Honour is aware this principle permits the Court to take into account like crimes on sentencing even though no formal conviction is registered.

10 The application of that principle, while not routinely and frequently invoked, is not uncommonly relied upon. Its use is recognized and approved. Some of the factors that caused the Crown to rely upon the principle are as follows.

15 Tammy Homolka's death was previously considered accidental. But for the accused's voluntary admission the Crown would not be in a position to prove what has been advanced in respect of her. Her admissions may serve to assist the authorities in bringing to justice any other person implicated, subject to a full investigation being conducted and completed.

20 Further, Tammy's death bears similarities to the crimes found in the indictment. Equally tragic in the result it may be viewed as a precursor, a prelude, and, in any event highly relevant to the chain of distressing conduct that has been presented before you.

25 On her admission this accused was not the originator of the plan to drug and sexually assault Tammy Homolka and she played a somewhat lesser role in the assaultive behaviour. Yet, at the same time she bears full responsibility. Indeed, in her

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5 capacity as Tammy's sister she will bear the continuing shame of violating all the trust that anyone, especially a younger sister, would have assumed.

10 I suppose that, in part, the invocation of the Garcia and Silva principle recognizes the unimaginable stigma that must be associated with being criminally responsible for causing the death of one's own sibling. As well the Crown has taken into account, in proceeding in this fashion, the horror visited on Karla Homolka's family in learning in rapid succession that their daughter, the accused not only had killed two young women but had in fact been criminally responsible in causing the death of their youngest daughter.

15 In the particular circumstances of this case, the Crown is not seeking an increase in parole ineligibility under the relatively new s.741.2 of the Criminal Code. As a general proposition the Crown supports the invocation of that provision. It is designed for crimes of violence. Non-reliance on the section should not be viewed as signalling any general trend or position. The decision not to request its application is one taken after careful reflection, in the unique circumstances of this and only this case, and following input of the police and after consultation with the victims families.

25 At the outset the total length of the sentence was of utmost importance to the Crown. It is submitted that a sentence of twelve years, should you agree to such a sentence, is of such a duration that it

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serves to control the accused for a considerable length of time.

5 Your Honour has been presented before you a significant body of psychiatric and psychological evidence to which my learned friend will be making reference during his submissions. In light of the specific psychiatric evaluation of this accused it is apparent that continued treatment will be required. I would venture that that is a lifetime proposition. This accused's special needs may present unique challenges to the penitentiary service over the course of what in all certainty will be a lengthy sentence. I have accepted that such factors should permit the correctional authorities flexibility in dealing with this offender in terms of her placement.

10 Further, it is recognized that placement possibilities for female offenders are a lot more limited because of the infrequency of women coming before the Courts, especially in relation to crimes of violence.

15 At the same time it is recognized that these crimes are of such immense gravity that the correctional authorities would look very carefully at placements and the awarding of privileges in any event.

20 Turning specifically to the sentence and why the Crown is proposing the sentence previously described.

25 The joint submission, which is the product of the most careful evaluation and lengthy discussions between counsel, in my respectful submission is an attempt to find a difficult amount in balance

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between mitigating and aggravating factors in this case.

With respect to mitigating factors, the Crown recognizes certain mitigating factors. They include, the accused guilty pleas.

She's entered early pleas. She was charged on May 18, 1993. She waived her preliminary inquiry at first appearance and elected trial by judge alone. Once the police focused on her she took immediate steps to work toward admitting her involvement and pleading guilty.

She has been of significant assistance to the police. She has participated in extensive interviews and her assistance has led to the uncovering of independent real evidence. She has expressed a genuine willingness to continue her assistance to the police, to testify and to tell the truth.

Obviously there will be those who question why the Crown is not recommending an even greater penalty in virtue of the horrendous facts. But at the same time it is the Crown and the police who are perhaps in the best position to weigh the value of her assistance against the state of the evidence prior to her revelations and the potential impact on subsequent trials. Without her statements the true state of affairs may never have been known. But with her assistance comes the unsettling accounts that causes one to recoil.

Her pleas have obviated a lengthy trial involving her. Her pleas, in terms of her own involvement have spared the victims families a trial involving

her. A guilty plea is a traditional hallmark of remorse.

The certainty of conviction regarding her has been considered by the Crown as well. Importantly, it is recognized by the Crown that she may help to ensure that those who may also be responsible for these odious crimes are brought to justice.

In presenting this joint submission the Crown has considered:

- her age
- her lack of record
- the abuse and influence by her husband, about which my learned friend will have information to provide
- her somewhat secondary role
- the fact that she will be marked forever

The Crown has also considered the psychiatric evidence which canvasses whether she represents an ongoing danger to the public, without minimizing for one moment the grave conduct that she has been involved in, in past.

The Crown's assessment, based on a review of such psychiatric evidence, is that absent the influence and association of someone whose behaviour bears the characteristics of what truly may be one of this province's and the country's most feared individuals, she is unlikely to re-offend. Having said that, and I will expand in my review of the aggravating factors, her involvement in such unthinkable crimes merits severe punishment.

With respect to the aggravating factors. I must confess that I have reflected on these crimes and

the accused's conduct to a very, very great degree. It is difficult to find words that accurately characterize this conduct.

Your Honour has heard Mrs. Mahaffy and Mrs. French on behalf of their families describe, in a courageous and heartfelt manner, the profound effect that the loss of Leslie Mahaffy and Kristen French has meant as daughter, as sister, as friend. Cherished memories merge with empty rooms, unfulfilled dreams, public and private pain. For some it is worse. The magnitude of the pain incapacitates. The healing never stops.

Who can speak of the grief of a parent who outlives a child. Who can predict the impact on a nine year old brother. Who can comfort those whose child has been victimized by such conduct. What is the effect on schoolmates and other members of the public. What Your Honour has before you in my respectful submission, is conduct that represents the depths of human behaviour.

Three young innocent lives have been ended in a shocking fashion.

It is submitted that you have before you an entire breakdown in the basic moral code by which society operates.

What sort of a person would agree to placing her sibling's life at risk.

The cumulative destruction is unprecedented.

The acts were planned. They were not impulsive.

What chance did any of the victims have?

The victims were young. They were subjected to disgusting sexual degradation.

In the case of Leslie Mahaffy and Kristen French they were subjected to extreme violence, torture, and wanton cruelty. Those young women were unlawfully confined.

The victims who were raised in loving, caring homes had no preparation for what was to befall them. Who would. With every passing minute their lives were in greater and greater jeopardy, until, at last, it must have seemed as if everything good had abandoned them. How wrong they would have been. Their families, their friends and great numbers of the community and police desperately searched. Unfortunately whatever immediate hope the victims had must have centred on Karla Bernardo. In this respect she totally failed, which brings us here today.

Yes, it's true that Karla Bernardo did not act alone and that she was under the influence of powerful influences. But it must be borne in mind that:

- she participated fully in the planning
- in Kristen's case she lured the unsuspecting victim into a trap
- her help was essential in maintaining the confinement
- she participated in sexual acts
- she ghoulishly recorded sexually assaultively behaviour
- she helped to administer stupefying substances
- she helped to guard against escape, including when she was left alone with a victim
- she had ongoing opportunities to withdraw

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- she placed herself and her husband ahead of the victims
- she came to know the victims but was not moved to prevent this conduct
- she actively engaged in a coverup
- all the while she continued to work, to socialize, to carry on; where would it stop
- but for the fact that her last beating came to the attention of the authorities these crimes may not have been solved when they were. A massive police investigation occurred. She didn't come forward until the net started to close
- she has permanently scarred the victims families and this community

Ultimately I am respectfully submitting that all of the factors need to be weighed and balanced.

An appropriate sentence has to reflect society's denunciation of this accused. The sentence must serve to demonstrate the need to protect vulnerable persons, especially young women.

In all of the circumstances I would respectfully submit that, bearing in mind Tammy Homolka's death, that the sentence of this Court respecting the two charges of manslaughter involving Leslie Mahaffy and Kristen French be twelve years on count one, twelve years on count two, concurrent to one another and that a lifetime ban be imposed pursuant to s.100 of the Criminal Code in relation to weapons and like material.

Those are the submissions of the Crown.

HIS HONOUR: To assist the media, to assist the

5 media, the joint submission was the last paragraph
of Mr. Segal's comments. That is the paragraph, "In
all of the circumstances I would respectfully
submit ..." and I would ask, I have already
indicated in, or at least in my order, that no
reference should be made to any of the deaths of
any persons. That is why I used the word, persons.
10 In that last paragraph, if you said, "In all of the
circumstances, I would respectfully submit that,
the sentence of this Court respecting the charges
of manslaughter involving Leslie Mahaffy and
Kristen French be 12 years on count one, 12 years
on count two, concurrent to one another and that a
lifetime ban pursuant to s.100 be made." Is that
agreeable, Mr. Segal?

MR. SEGAL: Yes, Your Honour.

HIS HONOUR: It is that paragraph that may now be
reported. Mr. Walker.

MR. WALKER: Thank you, Your Honour.

20 Your Honour, I will not respond to all of my
friend's submissions. Needless to say, there are
certainly a large number that I agree with.
However, there are some that I, I disagree with,
but for purposes of the sentencing this afternoon,
and for the record, this matter has been reviewed
25 extensively with my client and on my client's
behalf I am joining with my friend with the request
of this Court, that my client be sentenced to a
period of 12 years incarceration on each of the two
counts, concurrent to one another, and certainly
30 given the horrific nature of these acts, a s.100
order would seem to be in order.

5 Your Honour, Mr. Segal has indicated that without my client's assistance a great number of the horrific facts that you've heard read this morning, would not have been known.

10 In this regard, I wish - I wish to make the submission and made it known to this Court that that's to put it in a light mode, or a light plane. My client has been of the utmost assistance to the authorities, and continues to do so.

15 My client instructed me on our first early meetings in late February to commence in discussions with my friend, and the Attorney General's office and that was done.

20 Discussions were broken off for a period of time when I had my client placed in a psychiatric facility for some seven or so weeks.

25 The materials that are in the exhibit called, or entitled, Sentencing Materials, refer to three physicians in particular. Experienced forensic psychologist, Dr. L. Long and two forensic psychologists, Dr. Hans Arndt and Dr. Andrew Malcolm.

HIS HONOUR: I think you have them reversed. Dr. Malcolm and Dr. Arndt are psychiatrists.

MR. WALKER: Psychiatrists.

30 HIS HONOUR: Dr. Long is the psychologist.

MR. WALKER: Yes, and it was only after a lengthy period of time and several meetings both in Toronto with my client and Toronto with the doctors, that I felt we were in a position to continue with the discussions.

I point that out, because my client's instructions to me from the outset have been to cooperate with the authorities and some of the intermittent, or intervening seven week delay, was brought in - brought about because of the fact that I chose to exhaust all avenues on behalf of my client. But, I do not want that to be looked upon by this Court as any delay by my client in cooperating with the authorities, because my instructions from the outset were as I said, were to cooperate with the authorities. And, I think that cooperation has been borne out by the manner in which she's proceeded to deal with these matters, culminating with the pleas on today's date. Now, I would like to make some references to the reports contained in the exhibit. First of all, we'll go to tab one of the exhibit and that is the preliminary report from Dr. Arndt, vis-a-vis the issues of fitness to stand trial and the other issue of fitness to instruct counsel. We then go to tabs - tab two. Now, Dr. Arndt began in the capacity of, as he indicates on page one and further in his report, he essentially moved from evaluating my client for purposes of fitness to instruct counsel, to stand trial and so forth, to the treating physician. And, that was necessitated because of the fact that it was clear to him upon her admission that a great deal of work had to be done with her in bringing her out of the severe depression that she was in at the time she initially contacted my office.

5 So that his position changed. He became the treating physician, and that necessitated my retaining a further psychiatrist, and that was Dr. Andrew Malcolm. So, I just want to point out to the Court that is why I felt it in order to obtain the, an additional opinion.

10 The relationship that's been referred to, and that's the relationship of abuse, both mentally and physically by Mr. Bernardo on my client, is referred to at length in the report of Dr. Arndt, also in the following reports of Dr. Long and certainly Dr. Malcolm.

15 These are not physicians who spent three, four - certainly that Dr. Andrew Malcolm did not spent nearly the time that the other two gentleman did with my client, but these, both Dr. Long and Arndt, are doctors that spent 30 to 40 hours, and perhaps in Dr Arndt's case a longer period of time over the seven weeks in assessing and treating my client. Treatment began I believe in March, March 3rd or 20 4th and continued through to the end of April when she was discharged and she has continued to see Dr. Arndt up until the last, certainly as recently as June the 24th.

25 I point that out, because first of all my client never consented to a 30 day assessment as was reported. My client at all times knew she was being watched or surveilled by the authorities. My client never tried to be devious as to her whereabouts. The authorities were kept apprised of my client's location at all times.

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5 The particular hospital or psychiatric facility that my client was placed in, quite frankly, had numerous entrances and exits and to the best of my knowledge, there was not a single occasion that my client's conduct was called into question.

10 I think this is, this certainly will go to the ultimate question of whether or not my client presents a, as a danger both to herself and/or members of the public at this point in time.

15 The horrific nature of the offences, which obviously was known to my client while she was at liberty, did not become known to the physician, the treating physicians at once. You'll note the comments by Dr. Arndt that it wasn't until April 13 or thereabouts that my client could openly - and admit as to her involvement in the death of her sister and the treating physicians thought that certainly was an impediment, and until she was able to point that out and deal with that issue, further treatment would be that much longer and, and

20 delayed.

25 She met that crisis. She met that crisis with her family and her family are supportive of her. This is a family that have lost one daughter and certainly are about to lose another daughter. Their hurt is obviously real. It certainly has not been as protracted as the hurt of the Mahaffy and the French families, and I don't pretend to put it at that level, for that long period of time.

30 However, I think it's quite clear on today's date, perhaps for the first time, that there are three families that are victims in this case. Certainly

5 my client's family deeply miss their youngest daughter and they've had to come to grips with the role that the offender played in the, in those offences.

10 I'm sure that when one looks at the joint submission of 12 years, on first blush it may appear to be to some, a lenient sentence, or lenient sentences, but this has been a lengthy period of time and in this lengthy period of time my client is trying to, and has tried to, undo some and I - perhaps a minuscule amount, but undo some of the harm that she has caused.

15 No matter how many times one reads over the, the facts that Mr. Segal presented to you earlier, the - the nature of the offences is beyond comprehension, but the reports clearly deal with and explain, to some degree, if only in mitigation of sentence, the situation in which my client found herself. And, I point out to the Court that the psychiatrists and psychologist who have dealt with her are experienced, have dealt with her over a lengthy period of time. Have had the chance to interview her, re-interview her, test her, retest her and they have all been prepared and have put into a report their diagnosis and their prognosis.

20 The three of them are unanimous, and I - as you have seen, Dr. Arndt's report is much longer and that can be explained by the fact that as the treating physician, he saw my client, if not on a daily basis, a most regular basis.

25 I go to page 15 of the report, at paragraph two, it deals with the, his diagnostic conclusions in

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5 suffering from dysthymia, also known as reactive depression, as well as post traumatic stress disorder. A condition she developed as a result of her contact with her estranged husband, Paul Bernardo.

10 As much as the dysthymia could be seen as an almost self limited condition, but should respond to fairly standard treatment, the post traumatic stress disorder is a condition which will and would require prolonged treatment, that is, over a number of years, including medication and psychotherapeutic attempts.

15 Additionally, it was quite clear that Karla was starting to develop alcoholism. The comments with regard to that are contained in the previous pages of the report. I'm not going to go into the nature and the depth of the abusive behaviour. That's in the report and, for Your Honour to, to peruse, that extended from the initial verbal abuse into the demeaning, into the isolating from the traditional friends and then began with the occasional physical abuse and progressed to the abuse that is referred to and outlined in the, under tab six.

20 There are a series of photographs. Those photographs relate to the charge of assault with a weapon laid against Mr. Bernardo, for the beating of my client. If you take a look at, under tab seven on the first page of the three photographs of the, my client's face. Now, keep in mind, this is a couple of weeks after, weeks after the assault, and this is only after two phone calls came to my client's parent's residence to say they should go

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and take a look at their daughter, and take a look at their daughter's face.

With regard to the first call, the family then placed a call, that call was received by Paul Bernardo, and in response to the question as to whether there was any - anything wrong, it was indicated there was nothing wrong by Mr. Bernardo. I believe it was Lori Homolka that took that - made that call.

Well, a second call was received to the Homolka residence, that call said, you'd better go and take a look at your daughter, and this is what they found. Three photographs which clearly show a severe beating, repeated blows being struck in the area of my client's head. Turn the page over, my client's legs, her buttock, her thighs, a severe and systemic and sadistic beating. Note in particular the markings on the neck consistent with strangulation, or the application certainly of some sort of ligature applied to the neck of my client. Again, keep in mind that this beating was not detected and was kept from the Homolka family, and it is my position that Paul Bernardo tried to, and deliberately tried to stop my client's family from coming over to see her, what condition she was in. Again, as referred to in the reports, she would have been the fourth victim, in my submission. It's a classic case of wife beating. It starts with the verbal abuse, the demeaning, taking away your self respect, isolating from - isolating you from those persons who may have been able to exercise some degree of control over her - over

5 her, other than Mr. Bernardo. Then it moves on to the occasional violent, physical assault, the promises of not doing it again and it continues on a graduated scale, and ultimately it, in my submission, it would have followed that my client would not have escaped Mr. Bernardo. It was only, only a matter of time.

10 Again, I do not make these submissions to deter from the horrific nature of the offences, but I point out to this Court, that given my client's psychological make up in the beginning, she was exactly what he needed. She was the conduit, she was the vehicle.

15 She does not seek to minimize her involvement, it's right there. Mr. Segal has read the facts in. She does not take exception to the facts. She was there. She was there when both Kristen French and Leslie Mahaffy died and she was there when her own sister died. But, once the sister died, Paul Bernardo had her. There was, there was no return then. But from that point on, as the doctor said, indicated, there was very little that she could do in her own mind.

20 Now, she's going to be placed in a penitentiary setting. She is going to have some difficulties, that's obvious. Twelve years is not an insignificant period of time, given the fact that she's 23. She's certainly not street wise nor is she institution wise. Yes, she is eligible and I, I join in the submission that there be no increase in her parole ineligibility period. It's obvious
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30 that the authorities are going to have to assess

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5 her position in the institution as to where - where
they could place her. The reports also indicate
that she needs prolonged treatment. That's going
to cause one, or hope that the penitentiary
services would have the facilities for treating
this type of an offender. I've had contact with
the authorities and one would hope that, and I'm
10 sure that their, their objective will be to try and
maintain the type of treatment that she is
presently undergoing. Given the nature of the
offences, it's certain that she'd be looked at very
carefully within the institution for purposes of
parole, I mean that's - that's a given.
But, going back to the original point, and that is
15 that her help has been immeasurable, in my
submission. My friend may disagree a bit with
that, but that's what I would term it, and as a
result of her assistance, it's my understanding
that further potential evidence has been located.
20 So certainly, she has demonstrated a very real
assistance to the - to the authorities. I, I have
no doubt and nothing to suggest that she won't
continue to assist. I have nothing to suggest that
she will not continue her assistance to the
authorities, that is in line with what her first
25 instructions to me were, and I think she has proven
that by word and deed in the intervening weeks
leading up and to today's date.
I realize that sentencing is in your sole purview,
but I would ask you to consider the joint
submission given all of the background that's
30 referred to in the reports, and given that the

doctors are unanimous that she is not a dangerous person. Dr. Malcolm at page seven of his report, and I ask you to look at that, those comments that he makes. Dr. Malcolm in his diagnosis contained at pages five and six and seven goes into great detail, Karla shows no signs of any psychotic disorder. He finds indications of some residual organic brain disorder, but they're minimal and they should not interfere with her rehabilitation. Could not detect any signs of any personality disorder. Does not show the instability, impulsiveness and inappropriateness of a person, of a person with borderline personality disorder. She does not satisfy the criteria for the diagnosis of an antisocial personality disorder. He talks about dysthymia in the second to last paragraph, as one of his diagnosis. In the last paragraph of page five, "in addition, there are all of the factors that constitute psychological torture as defined by Amnesty International." And then, he goes on to explain those at the bottom sentence of page five and over onto page six. Then on page six, the second paragraph, he talks about learned helplessness, and I did put in the materials, the Lavallee case. The only reason I put that in there is because there is some discussion of various texts by Lenore Walker dealing with learned helplessness and in the, the wife battering cases. And as well, the second paragraph to the bottom of page six, he talks about the post traumatic stress disorder.

Mr. Walker - Submissions on Sentencing

5 So that certainly his diagnosis, when you go back and read Dr. Long's and Dr. Arndt's, they're all consistent. She is not a danger, which seems, and I guess I must voice my - the same observation as Mr. Segal made earlier, given the nature of these offences, but at this point in time, you've got to understand sir, that for the past months she has been seeking assistance and for at least seven of those weeks, was literally receiving psychological and psychiatric assistance 24 hours a day.

10 I have not included the material - in the materials, the large volume of hospital records. They deal mostly with the prescriptions, observations of the nursing staff, so forth and so on.

15 I would invite you in closing Your Honour, to impose a sentence of 12 years for each count, concurrent to one another, and that you make no recommendation with regard to parole, a period of parole ineligibility and in essence, leave that up to the, to the authorities.

20 Unless there's any further explanation you would like in the materials, I don't propose to deal at length with them, I would like - I would rather have them made as an exhibit and sealed.

25 HIS HONOUR: The sentencing materials filed will be exhibit ... With respect to exhibit one, I order that exhibit one be sealed for reasons given in Vickery, as I had indicated to the media yesterday and you heard the argument over that. The evidence with respect to the psychiatrist's report and the psychological report is not admissible in the trial

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against Paul Bernardo Teale and therefore it is essential that that evidence not be reported, and that is also the reason I am sealing the exhibit one which contains the two psychiatrist's report and the psychological report. Mr. Segal?

MR. SEGAL: Just one, one short additional matter. You have before you obviously, these very extensive reports and Mr. Walker has been very careful to, in terms of his references that this - I've discussed it with him and the reports are replete with this, but perhaps as sort of a - somewhat of an illustration in terms of the considerations that the Crown has taken into account, page seven of -
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page seven of Dr. Malcolm's report, the first full paragraph and in addition to - to speaking of the doctor voicing an opinion with respect to danger in the future. There is a very crisp compelling description of the situation that, from the doctor's perspective, Karla Homolka had to live
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under for some lengthy period of time during which these horrendous crimes were committed. It serves in some way to explain the powerful influences over, over her. It's not, not there as an excuse, as Mr. Walker said, but it is an extremely graphic description of the, the state that she was in
25
during this, this most - most bizarre relationship. With the Court's indulgence.

Thank you, Your Honour.

30
HIS HONOUR: I am going to take a five minute break, make it ten minutes, because the clerk has to get some material to make sure that these exhibits are sealed, and then I shall give my

reasons for sentencing.

May I say this to the families. In the course of my reasons, I am going to have to go over the tragic facts. I will warn you when I am going to do that, and you are welcome to leave the room. You do not have to hear it again. I shall notify the, if you wish, you may go back to the same rooms that you were in, I will have the Court Services Officer call you in again and I will pause when I have got over that part. I leave that entirely up to you. If you want to leave, I have to go over them because my reasons will go to the penitentiary with this accused. I am going to break for ten minutes. The families are welcome to go back to where, from whence they came during the break.

R E C E S S

(3:58 p.m.)

U P O N R E S U M I N G

(4:30 p.m.)

HIS HONOUR: For the benefit of the press, I shall tell you what part may be reported now. Anything that I do not say may be reported now, is subject to the publication ban. I will warn you when that part comes up that may be reported, immediately. Do you have anything to say, accused?

MR. WALKER: Your Honour, I have reviewed this with my client, given the nature of the offences to which she's plead to. Anything that she could say would certainly sound trite when compared to the facts. She only hopes that by entering the pleas and continuing to assist the Attorney General's

5 office and employees with regard to the unresolved
issues to follow, that in some small measure she
can begin to try and, albeit in a marginal way, try
and undo some of the harm that she has done. But,
she candidly has indicated to me that she has a
long way to go and she's taking one step at a time.
HIS HONOUR: Thank you, Mr. Walker.

10 REASONS ON SENTENCING

KOVACS, J.

The accused has plead guilty to two counts of
manslaughter contrary to the provisions s.236 of
the Criminal Code.

15 In count one, she has plead guilty that "on or
between the 14th day of June, 1991 and the 29th day
of June 1991, inclusive, at the City of St.
Catharines did unlawfully kill Leslie Erin Mahaffy
and thereby commit manslaughter."

20 In count two, she plead guilty that "on or
between the 16th day of April, 1992 and the 30th
day of April 1992 inclusive, at the City of St.
Catharines did unlawfully kill Kristen Dawn French
and thereby commit manslaughter."

25 I conducted the pre-trial conferences. In
addition to Mr. Walker and Mr. Segal, Ms. Fairburn
appeared with the Crown. Her input, as of the
other counsel was meaningful. Crown counsel
30 advised me that the victims families were kept
fully informed. Counsel acknowledged that the

prerogative of sentencing is exclusively within the jurisdiction of the trial judge.

5 Counsel consented that I preside at the plea of guilty, although I was the judge who presided at the pre-trials on a guilty plea; that is the regular practice in this jurisdiction.

10 I am satisfied that Karla Bernardo Teale is fit to stand trial and that mental disorder within the meaning of s.16 of the Criminal Code of Canada does not apply.

15 I turn to review the facts as given in the plea of guilty. I emphasize that as the trial of Paul Bernardo Teale will be in the future these "facts" are untested by counsel for Paul Bernardo Teale. These "facts" are admitted by this accused for the purposes of her sentencing.

20 After the accused's arraignment a joint submission was made that the accused be sentenced to 12 years imprisonment, on each count, concurrent, and an order be made under s.100 of the Code that the accused be prohibited from having in her possession any firearm or any ammunition or explosive substance for her life. The Crown did not ask for an order for parole ineligibility under s.741.2 of the Code, because this accused will need ongoing psychiatric treatment. If I impose a fixed term it might hamper the Parole Board in seeing that she gets the treatment that her care deserves,

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on the Crown's submission.

THE FACTS

(a) Re The Death of Leslie Erin Mahaffy

On June 15, 1991, in the early hours of the morning, the accused, in her statement to the Crown, alleged that Paul Bernardo Teale abducted Leslie Mahaffy, aged 14, by luring her into his car. He took her to the accused's and Paul Bernardo Teale's home in St. Catharines, where the accused and he lived as man and wife. On his arrival at the home with the victim, Paul Bernardo Teale woke up the accused. She was aware her husband had the victim in the house. She went back to sleep. The next day the accused avoided Paul Bernardo Teale. He was in a room with the victim Leslie Mahaffy.

At about dinner time on June 15, 1991 the accused first met the victim Leslie Mahaffy who was drugged and blindfolded. The victim had been plied with alcohol and drugs. The accused then joined Paul Bernardo Teale in having sex with the victim. Over the next several hours, Paul Bernardo Teale beat the victim repeatedly and had his way violently with her sexually over an extended period of time. After several hours Paul Bernardo Teale decided to kill the victim by strangulation. He and the accused discussed that the victim's death was the alternative to jail for the couple and also discussed the danger of the victim identifying Paul

5 Bernardo Teale. The accused knew of this plan and was in the room when Paul Bernardo Teale strangled the victim Leslie Mahaffy. In the accused's presence, Paul Bernardo Teale told the victim she would die.

10 Sometime later, the accused and Paul Bernardo Teal were surprised when the victim made a gurgling sound. He then strangled her until she died. The murder took place at about 2:00 a.m. on Sunday. The two had a discussion as to what to do with the body. They put the body in the root cellar of their home. Sunday then passed.

15 On Monday, the accused went to work. Paul Bernardo dismembered the body and put the body parts into concrete. The accused discovered this on getting home from work. While Paul Bernardo Teale was solely responsible for dismembering the body and encasing the body parts into cement, the accused assisted him in disposing of some of the body parts. The accused, twice, assisted in putting the body parts into the lake.

25 Paul Bernardo Teale told the accused that he was the "Scarborough Rapist" in reference to a long series of unsolved sexual assaults in Metropolitan Toronto. He is said, by her, to have told her he was possibly identified on one of those occasions and he did not want a possible identification to happen again.

30

5 On June 29, 1991, the last day referred to in the indictment, the cement blocks containing parts of the body of the victim were discovered in Lake Gibson in St. Catharines, when the water level in the lake was lowered for hydro purposes. Ironically it was the day the accused and Paul Bernardo Teale were married and were leaving on a honeymoon.

10 Following Leslie Mahaffy's murder, the accused began to accompany Paul Bernardo Teale at his request on drives in search of women. She was his "cover" in case the police stopped him.

15 The accused was regularly beaten by Paul Bernardo Teale in a vicious manner.

(b) Re The Death of Kristen Dawn French

20 On April 16, 1992 the accused accompanied Paul Bernardo Teale on a planned mission to abduct a female. Paul Bernardo Teale spotted Kristen Dawn French. He pulled his car into a church parking lot. The accused enticed the victim to the car on the pretext of asking directions. While the
25 accused was speaking to the victim Paul Bernardo Teale, armed with a knife, forced the victim into the car. Kristen suffered a small knife wound in the process. The accused was in the back seat and held the victim's hair from behind while Paul Bernardo Teale brandished a knife. He drove to the
30 home of the accused and Paul Bernardo Teale.

5 The accused closed the blinds and hid the telephones. The victim was unlawfully confined in the home. The victim was drugged with sleeping pills and alcohol. The victim was sexually brutalized by Paul Bernardo Teale. The accused joined in the sex acts. Videos were taken by both of them of each committing sexual assaults. Paul Bernardo Teale viciously beat the victim.

10 In the course of the next two days on two occasions Paul Bernardo Teale left the home to obtain food. The accused, alone with the victim, guarded the victim who was bound up. Paul Bernardo Teale gave instructions to the accused to use a rubber mallet on the victim if the victim gave any trouble. The accused did nothing to help the victim escape.

15 The victim became defiant and said some things were worth dying for. This caused her to be beaten more. The victim was then shown a video by Paul Bernardo Teale of Leslie Mahaffy's confinement.

20 A couple of days later Paul Bernardo Teale strangled the victim to death in the presence of the accused. The accused, using gloves, helped wash the victim's body in the jacuzzi, after death, to remove traces of evidence. A douche was used on the body. The accused cut the victim's hair off to preclude the possibility of carpet or other fibres being found in the victim's hair.

25

30

5 The accused and Paul Bernardo Teale then put the victim's body into a car and deposited the body in a ditch. They covered the body to conceal it. On April 30, 1992 the body was discovered.

10 The two went to extraordinary efforts to eliminate traces of the crime. The accused washed the walls down. She vacuumed the house repeatedly. The contents of the vacuum bags, the victim's hair and clothes were burned. The accused wiped the car down for fingerprints.

15 The facts which occurred in the home with these two tragic victims were able to be known to a very large extent and perhaps only, in some respects at least, because of the cooperation of the accused with the police.

20 (c) The Events After the Death Of the Victims

The accused was regularly beaten in a vicious manner by Paul Bernardo Teale. The Crown has independent medical evidence to this effect. The accused was also emotionally abused.

25 After the victim Kristen French's death, Paul Bernardo Teale continued to abuse the accused. Indeed it escalated. He treated the accused in the fashion that he abused the victims before their deaths. He locked the accused in the root cellar, for example. The accused was convinced in her own

30

mind she would be the next victim to die. She was severely beaten with a flashlight in January, 1993.

As a result Paul Bernardo Teale was charged with assault with a weapon. The accused moved out. The police moved in.

THE EVENTS SURROUNDING THE DEATH OF TAMMY HOMOLKA,
THE SISTER OF THE ACCUSED

The accused is not charged in respect to the death of her sister, Tammy Homolka. She was involved in that death. The accused's involvement in that death is lead as an aggravating factor in the sentencing on the convictions before the Court in the deaths of Leslie Mahaffy and Kristen French.

The Crown has committed itself not to proceed with charges against the accused in respect of the death of Tammy Homolka, in the event that the facts surrounding the death of Tammy Homolka are taken into consideration on the convictions which are before this Court in the deaths of Leslie Mahaffy and Kristen French. Counsel for the accused agreed that the Crown may include a synopsis of the facts surrounding the deaths of Tammy Homolka on this trial, although no charge has been laid against the accused, and no charge will be laid against the accused in respect to this death.

There is legal authority for this procedure.

5 Regina v. Garcia and Silva (1969) 3 C.C.C. 124
(O.C.A.) is the leading case. In that case, the
accused was charged with four offences of break and
enter and committing an indictable offence therein.
The Crown proceeded on only one charge. On
sentencing, the Crown submitted that if all four
charges were reflected in the penalty on the charge
10 proceeded with, the Crown would be content to
proceed on only one charge. Gale C.J.O. approved
of this procedure and said at p.126:

15 "We agree that frequently it is a
sensible and proper thing for a Judge to
take into consideration other
convictions and on occasions and under
proper safeguards other charges laid
against a convicted person. If the
other charges are taken into
consideration it seems to us those
20 safeguards should at least include
conditions that they are charges with
respect to which the accused will plead
guilty or will otherwise be proved
guilty and that the Crown commits itself
not to proceed with those other charges
in the event that they are taken into
consideration in sentencing on the
conviction before the Court."

25 In Regina v. Robinson (1979) 49 C.C.C. (2d) 464
(O.C.A.) Martin J. A. said (in respect to applying
30 the principle in Regina v. Garcia and Silva) at

p.467:

"Ordinarily the Court should take into consideration offences of the same class as those for which the offender has been convicted." (Emphasis added)

I am satisfied that the circumstances leading to the death of Tammy Homolka are the same "class" of crime as the deaths of the other two victims. That is, they are all acts of violence, specifically stemming from sexual assault.

I reviewed this law because generally an accused must be sentenced only for the offence he or she was convicted of. However, as outlined in R. v. Garcia and Silva it is proper at law to consider other charges for which the accused was not convicted if proper safeguards are employed.

A distinguishing factor here is that no charges were laid against the accused in the death of Tammy Homolka. However, the safeguard is there for the accused in the Crown's undertaking to lay no charges arising from the death of Tammy Homolka, if those circumstances are considered as an aggravating factor in the sentencing on these proceedings. Defence counsel acknowledged that the Crown could prove beyond a reasonable doubt a criminal offence against the accused from the circumstances of the death of Tammy Homolka.

In R. v. Nelson (1966) 51 Cr. App. R. 98, Winn L. J. said at p.101:

"... It is essential in the opinion of this Court, that in any such case the court should satisfy itself by explicit inquiry whether the accused before the Court does admit his guilt of those offences before they can be properly taken into consideration."

Mr. Walker: Does the accused admit her guilt of a crime arising from the death of Tammy Homolka and I would ask her to say so please?

MR. WALKER: Yes.

THE ACCUSED: Yes.

Thank you, you may be seated.

I am satisfied the accused is protected from further charges in this respect. I am also satisfied the accused has herself acknowledged that she committed a criminal act, though not charged in the death of her sister, Tammy Homolka.

The facts in the death of Tammy Homolka are these.

On December 24, 1990 the accused, Paul Bernardo Teale and Tammy Homolka (age 14) the accused's sister, were in the downstairs recreation room of the accused's parent's home. The parents and the accused's sister were upstairs asleep. Paul Bernardo Teale had expressed to the accused, on a

5 previous occasion, an interest in having sex with
Tammy Homolka. Ultimately, the accused agreed to
the plans. Paul Bernardo Teale put sleeping pills
into Tammy Homolka's drink; She passed out. The
accused and Paul Bernardo Teale undressed Tammy
Homolka and Paul Bernardo Teale had sex with her
while she was unconscious. The accused joined in.
They took videos. To keep the victim unconscious
10 the accused administered halothane, an anaesthetic
like ether. That drug had been obtained by the
accused at Paul Bernardo's request from her place
of employment at an animal clinic. She also
arranged the obtaining of the sleeping pills.

15 The victim started to choke on her vomit. She
apparently died in the basement from asphyxiation
on her vomit. The accused and Paul Bernardo Teale
made all efforts that they could to resuscitate the
victim. However, they covered up their activities
20 by re-dressing the victim, by concealing the camera
and video, by disposing of the drugs. They did
seek help by calling "911". An attempt at the
hospital to revive her, sadly, failed. The Coroner
ruled it as an accidental death.

25 Paul Bernardo Teale used this tragic secret
between them as a threat he held over the accused.

30 It was the accused's statement to the police
that first revealed to the police the true
circumstances of the death of Tammy Homolka which
had been ruled by the Coroner to be an accidental

death.

THE ACCUSED

The accused is only 23 years of age. She has no previous criminal record. She came from a good and happy and decent family.

She met Paul Bernardo Teale in 1987 when she was 17 years old. They courted. In early 1991, they started to co-habit. They married on June 29, 1991.

From about six months after their meeting, Paul Bernardo commenced a systematic, physical and psychological abuse of the accused according to the report of Dr. Arndt. The beatings escalated. He strangled her, threw knives at her, hit her with firewood, hit her with his shoes and finally with a flashlight. He stabbed her with a screw driver, pulled handfuls of hair from her head, punched her, kicked her and raped her. He pushed her down stairs. On one occasion her foot was punctured when he pushed her onto a board with a rusty nail. He systematically made her feel unworthy and cut the contact with her family down. (See the report of Dr. Arndt, p.13, for a report of that background.)

Finally, on January 6, 1993 the accused sought medical attention at the local hospital. It was then that she left Paul Bernardo Teale.

5 Dr. Arndt reports at p.7 that the emergency room physician at the hospital said, "this was the worst case of wife assault that he had seen." The day before that her husband, Paul Bernardo Teale (according to Dr. Arndt's report (p.7) hand cuffed the accused's hands behind her back and tied her legs together with the same electrical cord he used on the other victims. He put the accused in the root cellar, the same root cellar he had kept the other tragic victims.

10 The accused was subsequently admitted to hospital for psychiatric care on March 4, 1993 and was there until April 23, 1993. She required massive doses of medication to even touch that point that could calm her.

I have read carefully the reports of:

- 20 (a) Dr. A.I. Malcolm, a psychiatrist, dated May 28, 1993.
- (b) Dr. H. J. Arndt, a psychiatrist, dated May 30, 1993.
- (c) Dr. J. A. Long, a clinical psychologist, dated June 3, 1993,
- 25 - in respect to the accused.

Dr. Malcolm's opinion is, at (p.5):

30 "... She knew what was happening but she felt totally helpless and unable to act in her own defence or in anyone else's

5
defence. She was in my opinion,
paralysed with fear and in that state
she became obedient and self serving."

- and at (p.7):

10
"Now my opinion is that Karla is not a
dangerous person. In my opinion, Karla
has a good prognosis, but she will
require much assistance."

Dr. Malcolm was of the opinion also (at p.5):

15
"She does not suffer, nor has she ever
suffered from any disease of the mind so
severe as to have rendered her incapable
of appreciating the nature and quality
of her acts."

20
Dr. Malcolm came to the conclusion (at p.5):

"Karla shows no sign of any psychotic
disorder."

25
And at (p.7) he said,

"In my opinion Karla has a good
prognosis; but she will require much
assistance."

30
And at (p.4) he said,

5 "I had no doubt that Karla was a passive, non-violent person ... Even in her extremity she was unable to attack Paul in a final attempt to protect herself from what seemed certain death."

10 In Dr. Malcolm's view as well, she is not a danger to society.

15 Dr. Arndt's opinion (pg.2) was:

"I come to the conclusion that the accused was both fit to instruct counsel as well as fit to stand trial."

20 Dr. Arndt in saying that she is not a danger to society said in his report as well:

25 "Despite the rather horrendous events that took place around your client Karla and the events that she actually participated in, I do not see her as being a danger now or ever again to society, particularly as long as she is not in contact with her estranged husband, Paul Bernardo or someone like him. In my opinion, Karla requires lengthy psychiatric care, that is for a number of years with medication and initially hospitalization in order to allow her to recover from the very severe emotional scars that have been

30

inflicted on her."

5 Dr. Arndt reported at (p.16) as well that bone scans done during her hospitalization "clearly indicated evidence of previous injuries" and an x-ray report indicated an irregularity which was felt to be an old healed fracture at the base of the digital phalanx of the accused. Two
10 electroencephalograms of the accused read "abnormal" and a Spect scan was also "abnormal" in the area of the left frontal parietal cortex of the accused where she had been allegedly hit with a flashlight.

15 Dr. Long, a psychologist, reported that Paul Bernardo Teale threatened the accused that he would get to the accused through her family (see p.2) and would take her sister as a hostage.

20 Dr. Long, after administering numerous psychological tests to the accused, said at (p.10) in his report:

25 "... She is not a danger to herself nor to anyone else and therefore be placed in a low-security institution."
30

THE PROSECUTORIAL DISCRETION

5 In view of the circumstances of the crimes
which I have recounted, I believe I should make
some comments on the issue of prosecutorial
discretion. Prosecutorial discretion is well
10 recognized in law. In R. v. Catagas (1977) 2 C.R.
(3d) 328 (Man. C.A.), Freedman C.J.M. said at
p.333:

"... nothing here stated is intended to
curtail or affect the matter of
prosecutorial discretion."

15 - and at p.334 the Chief Justice said:

"... It is the particular facts of a
given case that call the discretion into
20 play."

In R. v. Harrigan and Graham (1975) 33 C.R.N.S.
60 (appeal dismissed at p.72), Henry J. said at
p.69:

25 "In the discharge of his responsibility
for the enforcement of the criminal law
in a just and proper manner (and I speak
of the Attorney General of Canada in the
federal field as well as the Attorneys
30 General of the provinces) he has the
final authority to decide whether or not

5 a prosecution for an indictable offence shall proceed ... In exercising both these powers, which vitally concern the right and liberty of the individual, he must take into account not only the interests of the individual but also what the public interest requires."

10 So the Attorney General has the power, taking into account the interests of the individual and the public interest, to lay the charge the accused faces taking into account the interests referred to in R. v. Harrigan.

15 The Crown, in exercising its discretion, considered quite properly, the past assistance, and future assistance, in the prosecution of the offences committed. The Crown has also considered that,

- 20 (1) The accused gave information to the police that would not otherwise be made known, as so often is the case, in cases involving confinement of victims.
- (2) The accused did not personally inflict the deaths although she was responsible in law and in fact.
- 25 (3) In all the circumstances it was in the public interest to lay the charges of manslaughter.
- 30

THE AGGRAVATING FACTORS

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The aggravating factors are self evident even to a callous observer. The conduct of the accused was nothing short of monstrous and depraved. It was not isolated conduct. The acts leading to the abduction of Kristen French were coldly and calculatingly planned, with full participation of the accused. She was present at the death of Leslie Mahaffy and, at least passively, participated in the planning of her death. The facts leading to the death of her own sister indicated planning on her part. The accused obtained the anaesthetic which was used to keep the victim unconscious and could likely have caused the victim to vomit.

20
The victims were but 14 and 15 years of age. It is an aggravating factor because the victims at such a young age were so much more susceptible to be lured to their deaths.

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The impact on the victim's families has been unimaginably traumatic. In this case, particularly, the emotional wounds of the victims of these crimes are not allowed even a quiet time to heal, in view of the constant publicity. While the accused is not the one doing that, it was the nature of the crimes she committed which has drawn that deeply hurtful publicity to these victims.

She must accept the full responsibility for that resulting publicity as an aggravating factor.

5 The impact on the communities of these victims of these horrible crimes is also an aggravating factor. Where previously there were community feelings of trust and tranquillity, there developed deep rooted fear and concern for the safety of the young women in these communities. Parents worst nightmares, so grievously suffered by these parents, were aroused. I agree with the Crown's submission that there was a deep concern in the community of a breakdown of the basic moral code by which society operates.

10 Aggravating factors, as well, were the circumstances which lead to the deaths of Leslie Mahaffy and Kristen French, including cruel confinement, sexual assault, torture and wanton cruelty.

15 The careful attempt to cover up the circumstances of the death of Tammy Homolka and the meticulous and planned attempts by the accused to eliminate evidence of the deaths of Leslie Mahaffy and Kristen French, all are aggravating factors. It goes to the consciousness of evil thought processes of the accused.

25 A most disturbing aggravating factor is that the accused was left alone with Kristen French. She did nothing to help her escape. To the

5
contrary, she stood guard over her with a rubber
mallet. The accused, too, had an opportunity to
help Leslie Mahaffy when the accused was in a room
with the victim. She sought no help for that
victim.

10
The role of the accused in luring Kristen
French to the car indicated that she was willingly
the "cover". Without the accused's participation,
the trust of that victim would less likely have
been obtained.

15
The accused placed her own interest and that of
Paul Bernardo Teale ahead of the interests of the
victims. That is the greatest crime against
charity.

20
The crimes shocked not just the victims' two
communities but the whole province and now the
country. It caused too, a most intensive
investigation.

25
Throughout all these events and over a
considerable period of time afterwards the accused
continued to carry on her normal activities,
apparently unconcerned for other potential victims.
She came forward only when her own life was in
danger.

30
The accused was in the most grievous breach of
trust to her young sister, who was but 14 years of
age. That trust tragically was misplaced by Tammy

Homolka and it lead to her death.

5 The accused has also inflicted grievous and yet
untold hurt to her own parents and sister who lost
a daughter and sister to death and now must endure
the accused's profound breach of the law for these
horrendous crimes. The accused's acts would cause
10 pain to any parent, and so much more to this
accused's parents who were loving, kind and
trusting of the accused throughout her life.

15 I have paused periodically in the course of
these remarks because it is important that this
accused reflect on the horror of these acts.

20 THE MITIGATING FACTORS

25 This accused, by her guilty pleas, has obviated
a trial in respect to her and has avoided
inflicting additional trauma on the victim's
families. The law regularly and quite properly,
accepts the fact that a plea of guilty is the first
step and a clear sign of remorse in many cases.
More importantly for this young person who is only
23 years of age, the acknowledgment of that guilt
is hopefully the first step in her rehabilitation.
30

5 I have considered her youth; she is 23 years of age. I have considered her previous unblemished character is also an important mitigating factor.

10 I have considered too, that she was described by experts as a battered wife who endured terribly harsh physical beatings. Her self esteem was gradually destroyed. Her sense of propriety and moral convictions were sublimated. This is vividly outlined in the report of Dr. Arndt. It is only in relatively recent history that we have learned of the terrible trauma that battered women endure. It has been now recognized in the Supreme Court of Canada in the case of R. v. Lavallee. We have so much more to learn of this blight on civilization, the battered wife syndrome. In the accused's case, not only was she beaten, but she had to hide physical evidence of beatings or she would be again beaten. She could not get medical attention for fear of reprisals by Paul Bernardo Teale. When she was finally seen in January 1993 in the hospital, the emergency room physician, as I said, is reported to have said, (in the medical report filed) that it was the worst case of wife battering he had ever seen in his professional experience.

25 I have considered too as a mitigating factor that these events (albeit of her own making and for which she must accept responsibility) will require her to continue to be under psychiatric care and as I said, she will have psychological scars.

30

5 The most significant and compelling mitigating
factor has been her cooperation with the police and
her agreement to cooperate with the prosecution
until justice has been done. In view of the great
care that was taken by the accused in concealing
her horrendous crimes, her cooperation is
particularly significant. Her cooperation is
particularly significant in that it has lead, I
10 understand, to other evidence.

15 VICTIM IMPACT STATEMENTS

20 Leslie Erin Mahaffy's mother and Kristen Dawn
French's mother gave the most moving of all
accounts of hurt and grief which has profoundly
changed the lives of both families.

25 The statements of these two brave women were
expressed far more movingly than I could ever
express them. They are filed as exhibits which are
sealed subject to being opened by a judge's order.
They are there for the use of the Parole Board at
30 the appropriate time or for treating doctors.

THE PRINCIPLES OF SENTENCING

5 The Crown has charged the accused under s.236
of the Criminal Code with manslaughter. The
maximum sentence for manslaughter is life
imprisonment. The maximum sentence in law is
reserved for the worst offence committed by the
worst offender. This accused has committed the
10 worst crimes, however she is not the worst offender
- for whom the maximum sentence is designed. I
find she is not the worst offender because:

- (1) She has no previous criminal record.
- (2) Most significantly she has cooperated with
the police in giving evidence, some of which
15 might not otherwise be available in this
type of crime, particularly in confinement
cases. She gave that cooperation not only
in respect of her own involvement in the
crime. This cooperation was, and will be
of particular assistance, partly in view of
20 extraordinary steps taken in an attempt to
conceal evidence in the crime, with respect
to another offender.
- (3) By her plea of guilty she has obviated a
trial and thus avoided additional trauma
25 for the victim's families.

30 Therefore, while the crimes fit into the
category of the worst crimes, the offender does not
fit into the other category, i.e. the worst
offender which category is required to impose the
maximum sentence. It is for that reason that the

maximum sentence of life imprisonment is not applicable in this case.

The paramount consideration in applying the principles of sentencing in a case involving shocking acts of violence is that the sentence must be long enough to deter others in the community from acts of violence.

I keenly appreciate the community must be satisfied the sentence reflects the necessity for the protection and safety of the community. In this case, no sentence that I could impose would adequately reflect the revulsion of the community against the accused for the death of two completely innocent young girls, who both had lived their young lives beyond reproach in the eyes of their communities. I am keenly aware of all of that as well. I understand the righteous outrage which the community feels, and properly so.

It is the Court's responsibility to be objective and to consider the very special circumstances of this case and this accused. There are serious unsolved crimes, here and elsewhere. There can be no room for error in the successful prosecution of the offender for the safety of the community, whoever that offender may be, and I ask that no inferences may be drawn from my remarks in that instance.

5 The Courts have held repeatedly that an appropriate consideration in the principles of sentencing is the cooperation that an accused gives to the police and to the prosecution. In R. v. Alfs (1974) 17 Crim. L.Q. 247 (O.C.A.), the Court of Appeal said:

10 "We think that the assistance which the appellant has given to the police at some risk to his own safety, is an appropriate consideration in considering the fitness of the sentence imposed."

15 [See also R. v. Kirby et al (1981) 61 C.C.C. (2d) 544, R. v. Spack (1984) 12 W.C.B. 82 (H.C.J.), R. v. Scherer (1984) 16 C.C.C. (3d) 376 (O.C.A.).

20 The Courts however, will not give the accused credit for minimal cooperation or where the accused acts as an informer solely to avoid punishment for herself and not in assisting in respect to the investigation of other offenders. [See R. v. McPartland (1981) 63 C.C.C. (2d) 88 (O.C.A.); R. v. Morin (1985) C.S. 505 (Que.Ct. of Sess.) As I said, the accused gave significant and perhaps invaluable cooperation beyond her own crime. In this way this case is distinguishable from R. v. Matteson (unreported).

30 The rehabilitation of the individual accused is also a principle to be considered. The accused is 23 years of age and will require extensive psychiatric care. I am satisfied on the basis of

the reports which I have and hope that she can be rehabilitated.

The specific deterrence of the accused is a principle that courts consider as well, so that the length of the sentence will impress upon this accused never to commit a crime again.

Society too must be satisfied that the sentence is of sufficient length that society is protected from the danger of the accused. The length of sentence and the Parole Board's review procedure, I am satisfied will be a protection to the public.

The hurt this criminal has inflicted on the victims and their families is also an important consideration in the imposition of sentence. It is fundamental that in this case the victim's families were kept fully informed and had meaningful input before the joint submissions were made.

As I have said, I have reviewed the expert opinions as to her psychiatric history and prognosis.

It is for all of these reasons that I accept the joint recommendation as to the sentence.

Stand up. I sentence the accused as follows:

- (1) 12 years imprisonment on count one.
- (2) 12 years imprisonment on count two, which is to be concurrent to the other sentence in

count one.

- (3) There will be an order mandatory under s.100 of the Code prohibiting the offender from having in her possession any firearm or any ammunition or explosive substance for her life.

I make no order under s.741.2 of the Code for an increase in the time of parole ineligibility. I make no such order because the length of sentence is the most important factor in the Crown's submission, and I agree. I also do not make such an order as I do not wish to fetter the Parole Board's discretion in her placement. I understand that the placement possibilities for women are limited. I do not wish to hamper the treatment of the accused by imposing a period of ineligibility for parole. I am advised that the latter term on the sentence was also with full input from the victim's families and the police.

I have endorsed the indictment as follows:

- The accused was arraigned.
- She plead guilty to count one and guilty to count two.
- A conviction is registered on count one and on count two.
- The accused is sentenced as follows:
 1. 12 years imprisonment on count one.
 2. 12 years imprisonment on count two, which will be concurrent to the sentence on count one.

5 3. There will be an order under s.100 of the Code,
 prohibiting the offender from having in her
 possession any firearm or any ammunition or
 explosive substance for her life.

 Do you understand that order, for the rest of
 your life, you are never to have in your possession
 any firearm or any ammunition or explosive
10 substance, do you understand that?

 THE ACCUSED: Yes.

 4. I make no order under s.741.2 of the Code.

 Mr. Segal, any comments on the endorsement?

15 MR. SEGAL: No comments.

 HIS HONOUR: Mr. Walker, any comments on the
 endorsement?

 MR. WALKER: None, Your Honour.

20

25

30

APPENDIX "E"

Letter of Advice to Green Ribbon Task Force
dated May 26, 1995

Ontario

Ministry of
the Attorney
General

Regional Director
of Crown Attorneys

Central South
Region

Court House
50 Main Street East
Hamilton ON L8N 1E9

Tel/Tél.:
(905) 308-7227

Ministère
du procureur
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Directeur régional
des procureurs
de la Couronne

Région du
Centre-Sud

Palais de Justice
50, rue Main est
Hamilton On L8N 1E9

Fax/Télec.:
(905) 308-7224

May 26, 1995

Private & Confidential

Inspector Vince Bevan and
Acting Inspector Tony Warr
Green Ribbon Task Force
c/o Colony Hotel
28th Floor
89 Chestnut Street
Toronto, Ontario
M5G 1R1

Dear Sirs:

Re: Karla Homolka

You have sought legal advice from Michael Code, Leo McGuigan, Jerome Wiley and myself as to whether a charge, or charges, should be laid against Karla Homolka as a result of an aggravated sexual assault on a young female by Paul Bernardo and Karla Homolka. The assault is portrayed on video tape.

I think it would be helpful to set out the chronology. The police came into possession of video tapes in October of 1994 and entered into an extensive investigation with regard to a number of aspects, including this incident and the need to attempt to fix the date of its occurrence. A cautioned statement regarding this matter was taken from Homolka in February of 1995. This statement was transcribed and the investigation was concluded in April of 1995. On April 21st we met with you and requested further investigation in the form of psychiatric reports. On May 18th we met with George Walker, counsel to Homolka.

As we understood your position when you met with us, you believe you do not have reasonable and probable grounds to lay a charge of perjury against Homolka arising out of the non-disclosure of this incident, because you accept the medical advice that she genuinely has suffered post-traumatic amnesia. We are all of the opinion that there is a proper basis in law

for this conclusion. On the other hand, you do have reasonable and probable grounds to believe that Homolka, and of course Bernardo, committed an aggravated sexual assault because of what is disclosed on the tape. We also agree that there is proper basis in law for this conclusion.

We were assisted in arriving at our conclusions by our discussions with you and background information from Murray Segal and George Walker. We have reviewed the tape and the transcript and considered the psychiatric reports from Drs. Brown, Hucker and Jaffe. We have reviewed the videotaped interrogation of Homolka regarding this incident. We have also discussed the relevant considerations with, and have received input from, counsel to the victim and her family.

The issue then becomes, in all the circumstances, whether a charge should in fact be laid.

This is an extremely serious offence, involving as it did the planned drugging and sexual violation and degradation of an innocent young girl who had placed her trust in Paul Bernardo and Karla Homolka. They violated that trust in the most grievous fashion. The video taping of the whole sordid incident significantly aggravated the circumstances.

We observed that this crime has significant similarities to those committed against Tammy Homolka. The attack took place at a point in time shortly after Tammy had died in like circumstances. Indeed the victim appeared to stop breathing at some point and a 911 call was made, only to be cancelled when she revived. It also appears that the assault on the victim may well have been repeated on a second occasion.

We must be concerned for the victim and her family. The revelation of this crime long after it took place, and its shocking details, and the potential public knowledge of her identity through the Bernardo trial has, and will undoubtedly continue to have, a significant and devastating impact on the family, and particularly the victim.

Public perception is important. While we cannot avoid making difficult decisions simply because they would be unpopular, the public is entitled, once the facts and circumstances are known, to assess whether justice was indeed done. Because of the way in which these events unfolded there has been no public acknowledgement by Karla Homolka of her role in this offence, although it will undoubtedly be admitted by her in her testimony. We expect that the information on the video tape will be an appropriate consideration for the Parole Board, at such time as it is called upon to exercise its discretion on releasing Homolka, and you should ensure that the Board will have before it full knowledge of Homolka's conduct in relation to this further offence.

We have concluded that there is an air of reality in Karla Homolka's claim that, during the period of time from attending at George Walker's office in February of 1993 and leading up to her guilty plea, she did not recall the incident involving the victim. This opinion is supported by the statements of psychiatrists that Homolka suffered from post-traumatic stress disorder and their advice that this memory loss is consistent with that diagnosis. We note as well that it is accepted by our medical experts that individuals in such circumstances generally recall incidents incrementally. Shortly after Homolka's incarceration, Dr. Brown, based on appropriate professional concerns, discouraged her from attempting to recall other dream-like incidents in order to treat her. We note that the first mention of the victim, and the first knowledge of these particular incidents, was contained in a letter that Homolka wrote to George Walker dated October 6th, 1993. This was at a time when the police, prosecution and indeed the victim herself had no knowledge of this matter. Mr. Walker turned over a copy of this letter to the police almost immediately.

Particularly compelling was the fact that Homolka had maintained from the outset that Bernardo had video taped his sexual assaults. She assisted the police in attempting to locate the tapes and insisted that he would not have destroyed them. If she recalled the attack that is video taped, she must have known that once the tapes were found the attack itself and her involvement therein would come to the attention of the police. Her disclosure to George Walker of a beginning of a recollection of the incident was made at a time when the police no longer had any expectation of locating the tapes. We observe that Karla Homolka appears to have revealed, in graphic detail, her involvement in significant and disturbing crimes, save in respect of this victim, as is now confirmed by the video tapes.

This was an extremely grievous crime. However, the circumstances surrounding the death of Tammy Homolka were, because death resulted, even more serious. Homolka gave explicit details of the attack on Tammy. Her credibility with regard to that incident is supported by what appears on video tape.

We do not ascribe to the theory that Homolka withheld information because this victim was alive. We base this on your thorough investigation and the medical evidence. Aside from the fact of the disclosure at a time when there appeared to be no likelihood of the tapes being found, her admission of her involvement in her sister's sexual abuse and death, and her proposed plea and incarceration, required her to deal with her own parents and other family members.

A further consideration is the impact that earlier admission would have had on a guilty plea and sentence. While it cannot be said with certainty that the sentence imposed would necessarily have been greater, any additional punishment would not have added significantly to the sentence of twelve years imposed by the court. It should be noted as well that Justice Kovacs was advised on the plea that Homolka had procured young female friends for Bernardo's sexual gratification, based on her memory recall at that point in time. However, it is appreciated that the video and subsequent investigation disclosed a significantly more serious set of facts than was placed before the sentencing court in relation to this victim. We also point out that much more is now known about the persistent physical and psychological harm that Homolka suffered at Bernardo's hands which, aside from the impact it might have had on her ability to recollect, undoubtedly mitigates and explains to some extent her role in all this. As shocking as the crime was, Homolka's role is at least partially explained by the trap into which she felt she had fallen as a result of Bernardo allegedly holding over her her role in Tammy's death.

We found particularly troublesome the segment of a tape in which Homolka smiles at the camera while apparently administering halothane to the unconscious victim, while the victim is being sexually violated by Bernardo. Although there were misgivings, Homolka's explanation that she was forced to perform in this fashion by threats of violence from Bernardo is borne out by the evidence, including medical opinion, recently obtained by you. We note that Kristen French was at one point forced by Bernardo to smile for the camera.

The potential impact on the Bernardo trial is also a consideration. A charge laid at this point in time, aside from the tactical considerations of how and when to deal with the prosecution of Homolka, may deflect the attention of the jury and others from the trial itself. There is a risk of a mistrial. A charge at this juncture may, as well, create an impression that we are responding to public pressure and were in fact conceding that Homolka's initial sentence was inadequate. In any event, the charge would add significantly to the pressures already being brought to bear on Homolka in her role as a witness. It is worthwhile remembering that she has given a consistent version of events from the outset and has cooperated fully with the requests of the police and the prosecution. She voluntarily provided key information to the identification of the murderer of Kristen French and Leslie Mahaffy at a point in time critical to the police investigation. There appears little doubt that she would regard herself as being unfairly dealt with if charged. Certainly her counsel George Walker indicates this view.

A charge would undoubtedly have some impact on her effectiveness as a witness. The courts have repeatedly indicated that an accomplice should have all charges against him/her disposed of before testifying and accordingly we must consider the effect of the timing of a charge now on Bernardo's trial, as we do not have the luxury of being able to wait until after his trial is over.

Aside from the questionable timing of the charge, when the prosecution is underway and Homolka is expected to testify in the near future, the role of Bernardo and his former counsel Ken Murray cannot be disregarded. Bernardo disclosed the location of the tapes to Murray and Murray came into possession of them at a time when the police search had been completed but negotiations regarding a plea had not yet been completed with Homolka and her counsel. Had Murray turned the tapes over to the police, as he as a lawyer was obliged to do, then the issue surrounding this assault, and Homolka's role and recollection regarding it, would not confront us now. At the least it would have been dealt with at the time of Homolka's guilty plea. There is a substantial likelihood that discussions with Homolka's counsel would have ceased and that there would have been a joint prosecution on murder and other charges. Clearly Bernardo and his current counsel cannot complain about any alleged benefit to Homolka which accrues to her, at least in part, from the alleged improper actions of his former lawyer. We are satisfied that the police acted with reasonable dispatch to carry out the investigation that was required once the tapes were disclosed. We also observe that Karla Homolka attempted, to the best of her ability, to assist the authorities at an early point in time, particularly when her assistance was most crucial.

It has long been recognized in Canadian and British law that there is a "public interest" discretion not to charge, even where there exists grounds for doing so. The Honourable G. Arthur Martin referred to this in the Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions, in quoting former English Attorney General Sir Hartley Shawcross's famous pronouncement that "it has never been the rule in this country - I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution --- [T]he public interest --- is still the dominant consideration." After considering all the factors which we believe relevant, we are unanimously agreed, and it is our advice, that although there are reasonable and probable grounds to believe that Homolka committed the offence of aggravated assault, a charge would not be in the public interest. We are convinced that, on balance, the arguments against laying the charge outweigh those in favour.

- 6 -

We recognize, of course, the distinct roles of prosecutor and police officer. Ultimately it is your decision whether to lay a charge. We trust that our advice will assist you in that regard.

This has been a most difficult decision for us, and undoubtedly for you. Should you wish further discussion, should other arguments occur to you, or should there be a material change in circumstances that may call for reconsideration, we would welcome the opportunity to meet with you.

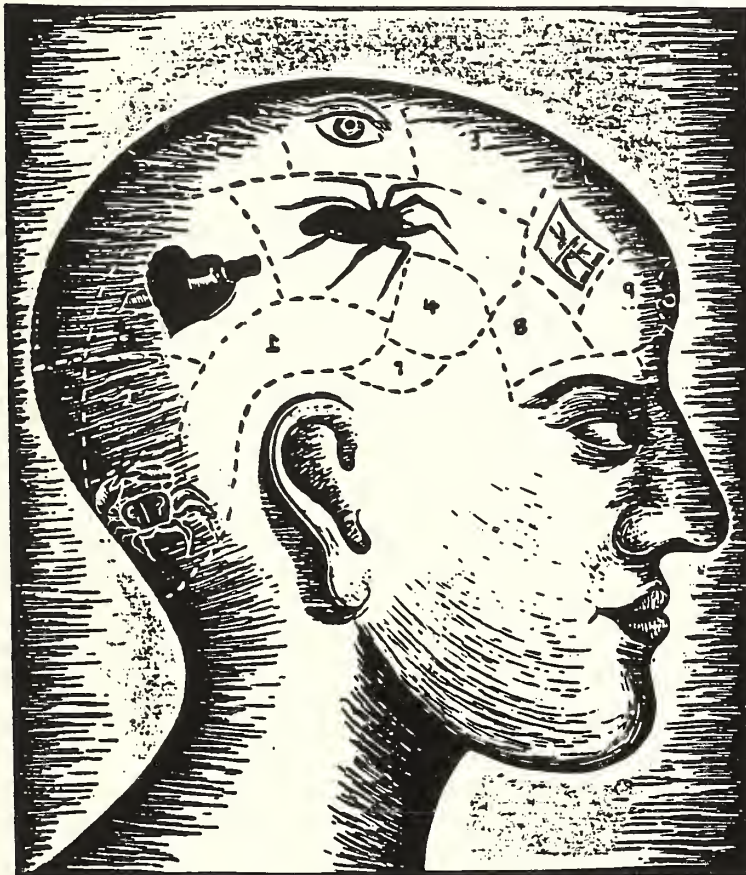
Yours very truly,

James A. Treleaven
Regional Director

JAT:el

Paper entitled "Compliant Victims of the Sexual Sadist"

Australian Family Physician



**Criminal investigative
analysis**

**Compliant victims of
the sexual sadist**
*Case studies from the
United States*

**Obsessive compulsive
disorder**

Therapeutic review
*Treatment of
schizophrenia*

Euthanasia
The dilemma

The disturbed mind



Compliant victims of the sexual sadist

■ This is a descriptive summary of the experiences of a sample of women who have been consensually involved with criminal sexual sadists. The paper details the physical, sexual, and psychological abuse to which the women were subject as well as the process by which they were transformed from independent, competent women to the compliant appendages of their criminally active partners. Similarities in the sexual sadist's criminal and consensual sexual activities as they reflect a specific paraphilic preference are discussed.

**Roy Hazelwood,
Janet Warren,
Park Dietz**

Robert R Hazelwood, MA, is a Supervisory Special Agent assigned to the FBI's Behavioral Science Services Unit at the National Centre for the Analysis of Violent Crime, the FBI Academy, Quantico, Virginia. He has conducted research on activities such as autoerotic fatalities, serial rape, sexual sadism, and the profiling of violent crime. He has consulted on hundreds of violent crimes throughout the United States, Canada, the Caribbean, Europe and Southeast Asia.

Janet I Warren, DSW, is an Associate Professor in the Department of Behavioral Medicine and Psychiatry at the University of Virginia. She is director of the Information Management System, a statewide forensic evaluation information system developed for the State of Virginia, and is a consultant to the FBI's Centre for the Analysis of Violent Crime.

Park E Dietz, MD, MPH, PhD, is an Associate Professor in the Department of Psychiatry at the University of California, Los Angeles. He has a consulting practice in forensic psychiatry based in Newport Beach, California, and is a consultant to the FBI's National Centre for the Analysis of Violent Crime and the Forensic Sciences Unit of the New York State Police.

Studies of prisoners of war (*Further reading*, Lifton R J), battered women,¹⁻⁶ (and *Further reading*) and abused children⁷ (and *Further reading*) have all shown that systematic manipulation of rewards and punishments in the context of social isolation can alter self concept, expectations, and behaviours among at least some victims. The most puzzling aspect of the behaviour of victims of prolonged abuse is the means by which the abusers gain compliance from their victims to the extent that the victim seems to the casual observer to be voluntarily undergoing abuse despite opportunities to escape.

In situations of domestic abuse, however, the 'captor' not only seeks compliance, but also seeks opportunities for continuing abuse of the victim. Every spouse-abuse worker has seen women go home from work night after night to abusive men whom they decline to prosecute even after life-threatening injuries. Every child protection worker has seen children lie to protect abusive parents. How do some captors gain such extraordinary compliance from the victims?

To answer this question, the authors examined the relationship that certain sexually sadistic offenders had with their wives or girlfriends. This inquiry grew from a study of sexually sadistic offenders and their offences.⁸ The 30 men in the original study executed criminal acts in which they were sexually aroused by the intentional torture of victims. Their crimes were also characterised by careful planning, selection of strangers as victims, recording of the offences by various means, keeping personal items taken from their victims, restraints of the victim, and a pattern of

holding the victims captive for periods ranging from 24 hours to 7 years before killing or releasing them. While the offenders were sometimes forthcoming about their criminal acts, few were forthcoming about the pattern of sexual arousal that motivated or accompanied their crimes.

To examine the intimate behaviours and sexual arousal of the sexual sadist, and to assess whether similar behaviours occur in both criminal and consenting contexts, seven women who had been the wives or girlfriends of sexually sadistic offenders were interviewed. As these lengthy interviews unfolded, it became apparent that the women described not only the same types of extreme emotional, physical, and sexual abuse, but also a common process of transformation through which each became the compliant appendage of her sexually sadistic partner.

The women

Seven women have been interviewed thus far by one of the authors, a special agent with the Behavioral Sciences Unit of the FBI. The women came to the awareness of the authors primarily through the FBI's involvement in the investigation or prosecution of their partners' crimes. The sample is obviously not random but represents an exploratory inquiry into the interpersonal exploitation that characterises the intimate relationships of certain identified sexual sadists.

Three of the women were married to sexual sadists and their marriages ranged in length from 2 to 13 years. The remaining four women dated sadists exclusively

for periods ranging from 3 months to 18 months. All were sadistically victimised by the men they were involved with. An eighth woman who also dated a sadist when they were both teenagers was interviewed; although they engaged in intercourse, she reported no sexual, physical or psychological abuse. This man was responsible for the deaths of more than 20 women within 11 years of their relationship.

As children, four had been sexually abused, two physically abused, and six psychologically abused. One reported that she had been sexually abused by two older sisters and an older brother.

All but one of the women were sexually naive at the time of meeting the sadists, even though five had previously been married. None of the women reported prior knowledge of sadomasochism before meeting the sadists.

All the women had low self-esteem and readily admitted that they lacked confidence in themselves. One woman, who was quite attractive, advised that one of the reasons she succumbed to the seduction of the sadist was that she could not believe that he found her physically attractive.

In every instance, the women came from middle to upper-middle class backgrounds, and none thought they had been economically deprived as a child. With no exceptions, the women were non aggressive, remorseful, and guilt-ridden. They berated themselves for 'being so stupid' and could not accept the fact that they had been manipulated to such a degree by the men.

With one exception, the women were professionally successful at the time they became involved with the men. *Table 1* contrasts the occupational status of the women and the sadists with whom they were involved.

The abuse

Physical abuse

All the women suffered physical abuse during their relationship with the sadists.

They reported being frequently beaten with fists and other blunt objects. One woman reported that her husband called his arms 'guns' and would periodically give her 'body shots' or blows to the chest and stomach. Another woman advised that her boyfriend kept her in captivity for 3 days during which he bound her from head to feet in adhesive tape. Hourly, he would stand her upright and strike her viciously in the body, knocking her over. Four of the women suffered broken bones at the hands of their 'loved ones'.

Five of the women were whipped with leather whips, ropes or belts. One respondent reported that her abuser carefully weaved a leather whip and used it on her until it became so badly frayed that he resorted to a belt for her beatings. Both the condition of the whip and photographic evidence of her trauma validated her assertion. Another woman was suspended by the wrists and whipped with a belt periodically over a number of years.

Four of the women were burned with matches, cigarettes, or lighters. In each instance, the injuries were located in areas normally covered by clothing, so as to preclude inquiries from associates of the women. Biting, as a means of physical abuse, was reported by all of the women. Painful clamping devices were used on the nipples and labia of five of the respondents. One woman advised that her boyfriend wanted to place an earring through her labia but he could not find "one he liked".

Six of the women reported that they were strangled manually or by ligature during sexual activities. Most reported either losing consciousness or being on the verge of doing so. Painful bondage was used on all of the women. The bindings would be applied so as to cause maximal discomfort (for example, tightly binding the breasts) or to force the women to assume uncomfortable positions for extended periods.

While all the women advised that some

of their injuries were visible to others, only one sought medical assistance. This woman's husband broke her arm while forcing her to engage in anal sex. She left him after that incident. She reported being too embarrassed or fearful to seek assistance until she decided to leave her partner.

Sexual abuse

All the women were sexually abused by the men. Three victims were forcibly penetrated by large foreign objects. One subject used a 12 cell flashlight and also a long cylindrical piece of wood. Almost invariably these items were inserted anally, so as to cause maximal suffering.

Six of the women reported anal intercourse to be their sadistic partner's preferred mode of sexual release. Forced fellatio was also reported by all seven women, and these same women reported that the sadists enjoyed ejaculating on their bodies, primarily their face or mouth.

Two of the seven women advised that they had been urinated on, and one reported being required to administer enemas to herself. Three of the women were forced to have sex with others; two were raped by friends of the sadists, and one was forced to engage in sexual acts with another woman who had been kidnapped by her husband.

All seven of the respondents agreed that the men were sexually insatiable. The constant demand for sexual activities took precedence over all other activities.

When asked to describe the worst sexual abuse suffered, one woman told being hung by her wrists and whipped to the point of unconsciousness, explaining that this degree of suffering and humiliation enabled her partner to become sexually aroused for vaginal intercourse. During the whippings, she was not allowed to cry, scream, or plead.

TABLE 1**Contrasts of occupational status of women and the sadists**

Woman	Sadist
Bank employee	Ex-convict, mechanic
Fire system engineer	Music sound mixer
Teenager	Metal worker
Business owner	Ex-convict, card dealer
Insurance broker	Business owner
Student nurse	Unemployed
Retail clerk	Unemployed.

Psychological abuse

All of the women suffered emotional abuse at the hands of their sexually sadistic husbands or boyfriends. Three of them were kept in physical captivity for a period of 24 hours or longer and three were forced to write and sign documents of slavery or servitude. Six of the seven victims were 'scripted' by the men. Such scripting included being required to repeat words or phrases given them by the men, being forced to verbally describe the sexual acts taking place, pleading for sexual or physical abuse, using derogatory terms for themselves or parts of their bodies, or developing obscene fantasy scenarios for the men.

Four of the seven women reported that their partners recorded the sexual and sadistic activities. Such recordings were

made in a variety of ways. One woman was photographed while being hung by her wrists. Another advised that her boyfriend took photographs, made drawings, audio taped and wrote about her sexual and physical abuse. The other two women were photographed during sexual acts and the photographs were used to blackmail them into continued compliance.

In every situation, the women were verbally abused by the sexually sadistic men. They agreed that the constant verbal degradation not only lowered their self-esteem, but also kept them in a constant state of fear and depression.

The transformation process

Intrinsic to the stories told by the seven women was a process of transformation

wherein they went from relatively normal patterns of living and relating to bizarre, destructive, and dangerous forms of exploitation and perversion. The process by which this transformation took place for them was surprisingly similar.

Selection of a vulnerable woman

Extrapolating from the behaviour described by the women, it appears that the sexual sadists had developed an ability to identify a naive, passive, and vulnerable woman. All the women reported feeling badly about themselves when they were initially approached by the sadist, either due to situational factors such as the breakup of a relationship or as a result of more chronic problems with self-esteem. The sexual sadists seemed able to assess this vulnerability and exploit it to manipulate these women toward interpersonal scenarios that would meet their need for dominance, control, and sadistic sexual behaviours. It seems likely that these men have attempted such activities with other women and failed.

The behaviour of the sadists reflected a degraded view of women in which they are all ultimately 'bitches' and 'whores'. They tended to choose 'nice' middle class women who had never previously been exposed to perverse sexual practices. The transformation of these 'nice' women into humiliated and demeaned victims was the sadist's mission. This process not only insured them access to a compliant sexual partner, but also highlighted the control and mastery he could exert over another.

Seduction of the targeted woman

The women reported that their partners were initially charming, considerate, daring, unselfish, and attentive. They gave the women gifts unexpectedly and were constantly attentive to their desires. As one woman said: "He couldn't

do enough for me." Another woman, who was experiencing marital problems, advised that the man she became involved with was available to her day or night for advice or "just to listen". The women all 'fell' for the men relatively quickly, even though they recognised a sinister side to them. In all of the cases, the men related to the women in a romantic, seductive manner that was the antithesis of their eventual degradation and abuse. Like the paedophile, the sadist continued this phase until he was confident in his ability to manipulate and use the woman in ways that were sexually gratifying to him. He cultivated the woman's genuine affection for him before initiating the next steps.

Shaping sexual behaviour

The time devoted to the shaping of the woman's sexual behaviour depended on the vulnerability and susceptibility of the woman. Typically, the sexual sadist persuaded the woman to engage in a sexual activity that was beyond her normal sexual repertoire. These activities included fellatio (n=7), bondage (n=7), the use of foreign objects (n=6), anal intercourse (n=7), sexual photography (n=4), or a combination of these. Once she had participated in such an act, the sadist then used 'positive reinforcement' (for example, gratitude, compliments, or attention) or 'negative reinforcement' techniques (for example, pouting, ignoring, or rejection) to obtain her compliance for progressively deviant activities. Over time, what began as atypical sexual behaviour became routine in their relationship.

In our earlier research on the criminal activities of the sexual sadist we found that anal sex was the preferred act involving penetration, followed by fellatio, vaginal intercourse, and foreign object penetration¹⁶. The interviews of these women confirm this rank-ordering of sexual preferences. The partners of these women eventually relied on

threats and violence to maintain the compliance of the women in such activities. In a number of instances, the women reported that once anal intercourse became a regular part of their sexual repertoire, vaginal intercourse ceased to interest their partners.

Social isolation

Having shaped the woman's sexual behaviour, the sadist moved into the fourth phase, 'social isolation'. The men gradually became overly possessive and jealous of any activity that did not centre on them, and they alienated any acquaintances who were not their own friends.

Restrictive measures were used so that the world of these women became increasingly circumscribed and their circle of confidants eventually dissipated.

Punishment

The fifth and final step in the transformation involves physical and psychological punishment. Having met, seduced, and transformed a 'nice' woman into a sexually compliant and totally dependent individual, the sadist has validated his theory of women. The woman is now a subservient, inferior being who has 'allowed' herself to be re-created sexually and has participated in sexual acts that no 'decent' woman would engage in, thereby confirming that she is a 'bitch' and deserving of punishment. In fact, three of the men referred to the women, and demanded that the women refer to themselves as 'evil'.

This punishment takes many forms. The types of punishment experienced by these seven women included painful sexual bondage (n=7), whipping (n=5), beating (n=7), captivity (n=3), signing a contract of servitude (n=3), enemas (n=1), being urinated on (n=2), burning (n=4), biting (n=7), forced sex with others (n=3), hanging (n=4), strangulation (n=6), and forced participation in criminal activities (n=4).

Discussion

The degradation and suffering experienced by these women illustrates the exploitative and inhumane behaviour that one person can intentionally inflict on another. Perhaps unsettling is that the women were compliant for so long with the men who degraded, exploited and abused them. The finding that as children, 25 per cent of the women had been physically abused, 50 per cent had been sexually abused, and 75 per cent had been psychologically abused and that in adulthood 50 per cent had previously been involved in abusive relationships, suggests some process of re-enactment in which early relational matrices are replicated in later life. This finding is similar to observations made by Walker.³ While asserting that there was no 'victim-prone' personality among battered women, she nonetheless noted that their backgrounds were characterised by sexual abuse and 'uncontrollable events' that might lead to depression.

Still, not all of the women had been previously abused and even those who had been were functioning competently when they met the sadists. In the majority of cases, the sadist took a competent woman of higher status and transformed her into a sexually and psychologically compliant slave. This process seems to require a subtle means of selection whereby the sadist recognises or tests women as to their potential susceptibility and vulnerability. While it is not clear exactly what they look for, it appears that vulnerability in the women's sense of self — who and what she is — makes her a prime target for molding by her eventual captor.

Many of the dynamics used in other kinds of 'brainwashing' or 'mind control' seem to be used in this context. Not only does the sadist isolate the women from other intimate relationships, but he also physically abuses her, deprives her of sleep, repeatedly degrades and humiliates

her, and gradually introduces new behaviours into her repertoire accompanied by both positive reinforcement for compliant behaviours and negative reinforcements for non compliant behaviour. The use of drugs also occasionally accompanies the process.

As highlighted by the authors in an earlier paper⁸ the issues of control seem central both to the sadist's behaviour and his pattern of sexual arousal. One sexual sadist defined sadism in the following way: **Sadism:** The wish to inflict pain on others is not the essence of sadism. One essential impulse: **to have complete mastery over another person**, to make him-her a helpless object of our will, to become her God, to do with her as one pleases. To humiliate her, to enslave her **are means to this end**, and the most important radical aid is to make her **suffer since there is no greater power over another person than that of inflicting pain on her** to force her to undergo suffering without her being able to defend herself. The pleasure in the complete domination over another person is the very essence of the sadistic drive.

The current study suggests that this state of 'complete domination over another person' is a goal to which the sexual sadist strives not only in his sexual behaviour but also throughout all aspects of his intimate relationships. According to the women who were involved with these men, every aspect of their lives gradually came under the control of their partners. Perhaps the most extreme case was a woman who voluntarily returned to abysmal conditions of captivity despite frequent opportunities to escape. The psychological control of the sadist was graphically expressed as a physical reality.

Of particular interest in understanding the sexual sadist is the finding that many of the behaviours that characterise the sexual sadist's criminal behaviour also characterise his consenting sexual relationships. As described by the former

wives and girlfriends, their relations with the sexual sadists were characterised by beatings, captivity, being bound, rape, forced fellatio, foreign object penetration, scripting, intentional torture, and the recording of sexual acts. These behaviours which mirror those found in the sadist's criminal behaviour¹⁶ support the view that certain behaviours constitute arousing components of the sadist's sexual response pattern regardless of situation. Interestingly, the availability of consenting partners with whom they can legally enact these sexual scenarios raises the question as to why the sadists simultaneously choose to commit crimes against additional victims, despite the risk of apprehension. Perhaps this motivation is best described by one sexual sadist who, after his first murder, observed: "I never thought it would be so easy to kill a person, or that I would enjoy it. But it was easy and I was enjoying the feeling of supremacy. A supremacy like I have never known before."

This intermeshing of attachment of perversion raises interesting questions concerning criminal responsibility. As indicated, several of the women eventually became co-conspirators with the sadists in serious criminal activities. The past decade has seen the 'battered woman syndrome' being recognised as evidence supporting claim of self-defense when the abused woman kills her abuser. From a somewhat different perspective, Patty Hearst argued that she had been brainwashed by her captors and was thus not fully responsible for her behaviour in support of the crimes. While the former addresses the question of guilt or innocence and the latter the issue of diminished capacity, neither suggests that the impairment of the abused or 'brainwashed' woman experiences in her reality testing is significant enough to warrant a finding of legal insanity under either the M'Naughten or Model Penal Code Standard. These standards negate culpability because of the

presence of mental illness and its impact on a person's cognitive functioning and volitional control. In the current sample, the wife of a sexual sadist who became involved in the kidnapping and murder of victims acquired for her husband was convicted on a guilty plea and is now serving a substantial prison sentence. Although her criminal behaviour began and was perpetrated exclusively within the context of her relationship with her husband, she entered a guilty plea in exchange for a shorter sentence than she might otherwise have incurred.

Finally, the results reported here suggest that domestic abuse complaints can be a source of investigative leads for unsolved sexually sadistic crimes. In particular, men who have persuaded, manipulated, or forced their wives or girlfriends to sign slave contracts, or to engage in a variety of deviant sexual or sexually sadistic acts should be recognised as men who are at risk of committing similar acts with strangers.

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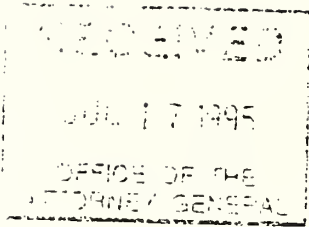
Alan N. Young

Barrister and Solicitor

Professor of Law

APPENDIX "G"

Letter from Professor Alan Young to the
Attorney General dated July 13, 1995



Telephone: (416) 736-5595

Facsimile: (416) 736-5736

July 13, 1995

The Honorable Charles Harnick,
Attorney General
Ministry of the Attorney General
720 Bay Street
Toronto, Ontario
M5G 2K1

Re: R. v. Karla Homolka

Dear Sir,

I am an associate professor of criminal law at Osgoode Hall Law School and I am a practicing lawyer specializing in criminal appeals. This summer I have been working for CTV providing legal analysis of the Bernardo trial, and as a result of this work I have had the misfortune of being in attendance at the trial on a daily basis.

In the past four weeks I have spoken to hundreds of people about this case and the only question that seems to be of any concern to the general public is the question of whether or not Ms. Karla Homolka can be re-prosecuted for her complicity in the murders of two young teenagers and for the sexual assaults on two other young teenagers. In fact, most people have little interest in the trial of the accused, Paul Bernardo, as they seem to assume that justice will be served at the end of his trial. Nevertheless, there has been, and will continue to be, a public outcry regarding the lenient sentence awarded to Ms. Homolka in exchange for her testimony. It is not an overstatement to suggest that her twelve year sentence is a travesty of justice.

I am writing this letter to request that serious consideration be given to seeking an extension of time to apply for leave to appeal her sentence in the Court of Appeal of Ontario. I have studied the terms of her plea negotiation agreement and I have concluded that re-prosecuting her is fraught with procedural and evidentiary obstacles which may prove to be insurmountable. However, I am of the opinion that seeking leave to appeal her sentence is legally and morally sound, and that such a course of action would be politically wise.

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It has become apparent to me that Ms. Homolka has been less than forthright with respect to the information she provided the police in her "induced" and "cautioned" statements. As a result, the Crown Attorney and the sentencing judge did not have full and frank disclosure before they committed themselves to a sentence of twelve years. My research reveals that there is a jurisprudential basis for reviewing her sentence and this procedure would not constitute an unjustified rescission of a legally-binding agreement, nor would it constitute an abuse of process.

Of course, nothing can be done until the trial of Mr. Bernardo has been completed; however, I hope that the political will is there to undertake a review of the trial transcripts and the pre-trial statements to determine if the application for leave to appeal would be meritorious. I believe that it may not be proper to leave this matter in the hands of the Crown Law Office because there may be a conflict of interest as a result of this office's involvement in the plea negotiations. Therefore, you may have to seek independent counsel to pursue this matter, and as a result of my familiarity with this case and my appellate experience, I am offering my services if you so desire. Even if you wish to pursue this internally, or by retaining other counsel, I would appreciate the opportunity to share my thoughts and research with any individual appointed to oversee this task.

I wish to note that I am not suggesting that any Crown Attorney involved in this plea resolution agreement was acting improperly or irresponsibly. The Crown did what it had to do at the time in order to bring Mr. Bernardo to justice. However, I also believe that Ms. Homolka manipulated and misled the Ministry of the Attorney General and was therefore able to secure a sentence which did not take into account her full involvement regarding the deaths of T. Homolka, L. Mahaffy and K. French. In addition, there were other sexual assaults committed by Ms. Homolka which were not disclosed prior to her being sentenced in July 1993.

Finally, I wish to indicate that I am writing this letter as a concerned individual and not at the behest of any organization or other individuals. I do believe that my suggestion of pursuing leave to appeal Ms. Homolka's sentence would be reflective of the public sentiment; however, I have not been asked to make this request by any organization or individual.

I have no intention of disclosing this letter to my media colleagues; however, once the Bernardo trial is complete, I do intend to make this request a matter of public record if you decide that my request is not worth pursuing.

Thank you for your consideration. I hope to hear from you in the near future.

Yours sincerely,



Alan N. Young
Professor of Law

cc: Deputy Attorney General, Larry Taman

